

1 IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
2 CIRCUIT IN AND FOR DADE COUNTY,
3 FLORIDA
4 GENERAL JURISDICTION DIVISION
5 CASE NO: 91-49738 CA(22)
6 FLA. BAR NO: 068445
7 NORMA R. BROIN, MAJOR MARK L. BROIN,
8 USMC, her husband, BETTY YOUNG, as
9 Personal Representative of the Estate
10 of ALFRED LEE, deceased, MICHAEL COY,
11 as Personal Representative of the Estate
12 of CAROL ANN COY, deceased: LINDA D.
13 ANDERSON; MILDRED MCQUOWN; COLLEEN STEVENS;
14 PATRICIA YOUNG; MARILYN MITTAN; PATRICIA
15 CRITTENDEN; NANCY FOSSEY STRICKLAND;
16 DONNA O'NEIL; LYNNE MARIE BLINCO; TERRY
17 CASTO; DENNIS STANLEY; JUDY LEE; YVONNE
18 TREASURE; PAMELA L. JOHNSON; DAVID
19 JOHANSON; KAREN McNALLY; JILL M.
20 APPLEGATE; SHARON C. MILLER; LANI BLISSARD;
21 ELOISE SMITH; MARISA L. MITCHELL; PAMELA J.
22 OROZCO and GREGORY SCOTT STRANG on
23 behalf of themselves and all others
24 similarly situated,
25 Plaintiffs,

V.

17 PHILIP MORRIS INCORPORATED, ("PHILIP MORRIS
18 U.S.A."), PHILIP MORRIS PRODUCTS, INC.,
R.J. REYNOLDS TOBACCO COMPANY, LORILLARD,
19 INC., LORILLARD TOBACCO CO., BROOKE GROUP,
LTD, DOSAL TOBACCO CORP., THE AMERICAN
20 TOBACCO COMPANY, LIGGETT GROUP, INC., BROWN
& WILLIAMSON TOBACCO, UNITED STATES TOBACCO
21 CO., FLORIDA TOBACCO AND CANDY ASSOCIATION,
NATIONAL ASSOCIATION OF TOBACCO DISTRIBUTORS,
22 TOBACCO INSTITUTE, INC., COUNCIL FOR TOBACCO
RESEARCH-U.S.A., INC., and TOBACCO MERCHANTS
23 ASSOCIATION OF UNITED STATES, INC.,
24 Defendants.

Deposition of CATHY LYNN ELLIS, PHD, taken
by and before Sally Valentine Qualls, Notary Public
in and for the Commonwealth of Virginia at large,
pursuant to Notice or Agreement; commencing at 9:11
a.m., May 28, 1997, at the law offices of Hunton &
Williams, 951 East Byrd Street, Richmond, Virginia.

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Reported by: Sally Valentine Qualls

APPEARANCES:

STANLEY M. ROSENBLATT, P.A.
By: JOHN A. HOAG, ESQUIRE
attorney, of counsel for the Plaintiff
Via Telephone

SHOOK, HARDY & BACON
By: GREGORY L. FOWLER, ESQUIRE
(1200 Main Street, Kansas City, Missouri)
attorney, of counsel for the Defendant
Philip Morris

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I N D E X

CATHY LYNN ELLIS, PHD
Examination By: Page
Mr. Hoag 5

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1 MR. FOWLER: John, first of all, I'll
2 identify who is in the room. I am Gregory L. Fowler,
3 with the law firm of Shook, Hardy & Bacon. Sitting
4 to my left is Dr. Ellis, and the court reporter is
5 here, Sally Valentine Qualls.
6 And I wanted to just state for the record,
7 John, I know that you have received a copy of
8 Dr. Ellis' expert statement or report in this case,
9 and I just wanted to let you know that in addition to
10 that, that Dr. Ellis will be ready to respond to
11 questions and provide testimony affirmatively
12 concerning the allegations raised by Ray Morgan in
13 his deposition in this case.

14
15 CATHY LYNN ELLIS, PHD,
16 was sworn and testified as follows:

17 EXAMINATION

18 BY MR. HOAG:

19 Q Okay. Could you state your name for the
20 record, please?

21 A Cathy Lynn Ellis.

22 MR. FOWLER: And John, if I could interrupt
23 for one moment, are you with anyone right now or is
24 it just yourself?

25 MR. HOAG: Just me.

6

1 MR. FOWLER: So I think we have identified
2 everybody who is listening to these words. Thank
3 you.

4 BY MR. HOAG:

5 Q Okay. And have you ever been deposed
6 before?

7 A Yes.

8 Q How many times?

9 A Once.

10 Q Excuse me?

11 A Once.

12 Q And what were the circumstances under which
13 you were deposed one other time?

14 A It was in March of this year for the
15 Mississippi case.

16 Q The Mississippi attorney general's --

17 A Correct.

18 Q -- case?

19 A Right.

20 Q And who deposed you?

21 A Ron Motley and Anne Ritter.

22 Q And how long were you deposed for?

23 A Day and a half.

24 Q Okay. And how long did you prepare for
25 that deposition prior to it taking place?

7

1 MR. FOWLER: I'm going to object on
2 vagueness.

3 BY MR. HOAG:

4 Q You can answer. How many hours did you
5 spend preparing for that deposition?

6 A I find that very difficult to answer,
7 because I think that one's education and experience

8 throughout their whole life is obviously going to
9 come into play in a deposition. So I think that most
10 of my experience in my life and my work history and
11 all of the things that I have read over the years
12 were preparation for it.

13 Q Did you meet with attorneys prior to giving
14 that testimony?

15 A Yes.

16 Q I didn't hear you.

17 A Yes.

18 Q And how many times did you meet with
19 attorneys prior to providing that testimony in the
20 deposition for Mississippi?

21 A Specifically for that case, one day in
22 Texas a few weeks before and then the three days
23 before the deposition.

24 Q One full day in Texas and then also three
25 days before the deposition?

8
1 A That's correct.

2 Q Okay. And what attorneys did you meet with
3 one, the one full day -- who did you meet with?

4 A It was Vineet Bhatia, Bill Myer,
5 Mr. Sussman, Evan Herwitz and Sue Hendrickson, are
6 the ones that I can remember.

7 Q And what did you do for that one full day?

8 MR. FOWLER: I'm going to object. I'll
9 allow the witness to answer questions concerning who
10 was involved and when, but in terms of substance,
11 I'll caution the witness that anything that was
12 discussed during those preparation sessions are
13 attorney/client privileged communications, and you
14 ought not reveal the substance of any of those
15 communications, but you can go ahead and answer the
16 question to the extent that it doesn't get to those
17 matters.

18 MR. HOAG: So to the extent that the
19 witness isn't going to answer about what happened
20 during the preparation session, what she said, what
21 she did, and what her responses were, I will certify
22 all of those questions. So --

23 MR. FOWLER: Just to be clear, John, I'm
24 just telling her that she cannot relate the
25 conversations, the material related to her directly

9
1 by the lawyers. I mean, she can tell what she
2 reviewed and those sorts of things, but I'm just
3 saying that she can't reveal the substance of what
4 the lawyers told her.

5 MR. HOAG: Well, again, any questions that
6 she doesn't answer related to this, I will certify
7 those questions.

8 BY MR. HOAG:

9 Q So for the hour that you spent, for the
10 full day that you spent with these numerous
11 attorneys, what did you do?

12 A Well, there were parts of the day that were
13 involved in preparing the list of documents and
14 things that I would rely on. There were parts of the
15 day that were involved in putting together opinions,
16 and there were parts of the day that were involved in
17 reviewing testimony and practicing some of the
18 questions.

19 Q So part of the day you reviewed testimony
20 and you practiced some of the questions. Now, when
21 you say, practiced some of the questions, do you mean
22 somebody questioned you and you answered?
23 A That's correct.
24 Q So you practiced a deposition, correct?
25 A Yes.

10

1 Q Who asked you the questions?
2 A Any variety of individuals.
3 Q So it was more than one at a time?
4 A That's correct. It was -- generally it
5 would be one person doing a group of questions, then
6 another person doing another group of questions.
7 Q And after you answered, did they suggest
8 other ways to answer?
9 MR. FOWLER: I will object to the form of
10 the question.
11 BY MR. HOAG:
12 Q You can answer. Did the attorneys ever
13 suggest ways to answer the questions?
14 A In substance, no.
15 Q When you say, in substance, no, what do you
16 mean?
17 A In substance the answers were mine.
18 Q Okay. When you answered a question, did
19 they ever tell you not to answer it that way --
20 A No.
21 Q -- during the practice session?
22 A That's what I mean, no.
23 Q Okay. So the attorneys never told you not
24 to answer a question in a certain manner; is that
25 correct?

11

1 A In substance, no. Manner, style is
2 different. In substance, in terms of content, no.
3 Q What did they tell you about your manner
4 and style?
5 A Things about going slow, making sure you
6 know the question, those kinds of things.
7 Q So they told you to speak slowly and make
8 sure that you know the question?
9 A That's correct.
10 Q And did they tell you anything else?
11 A Maybe in the process, but I can't recall
12 right now.
13 Q Okay. So part of what you did was you went
14 over a list of documents. Were any of the documents
15 provided to you by the attorneys?
16 MR. FOWLER: I'm going to object. That's
17 vague. I'm not sure what question you're asking,
18 John.
19 BY MR. HOAG:
20 Q Were any of the documents provided to you
21 by the attorneys, ma'am?
22 A In the course of the preparation, I mean,
23 in the review?
24 Q Yes.
25 A Provided in what way? I mean, sometimes

12

1 questions were asked about documents.
2 Q Provided in what way?
3 A Well, yes. I mean, I'm not sure I

4 understand your question.

5 MR. FOWLER: I'm going to object. She
6 doesn't understand what documents you're talking
7 about. You haven't identified what types of
8 documents you're talking about. It's a vague
9 question.

10 BY MR. HOAG:

11 Q Talking about the specific documents that
12 you told me that you prepared a list of, documents
13 when you were with the attorneys.

14 MR. FOWLER: John, we faxed to you a list
15 of the literature upon which Dr. Ellis might rely for
16 her opinions in this case, and we faxed that off.
17 That's the list that she's talking about. It's just
18 a list of --

19 BY MR. HOAG:

20 Q Dr. Ellis, let me ask you questions here.
21 The list of documents that you provided to us, did
22 you prepare that list yourself?

23 A I'm not aware of what list was provided to
24 you, so I really can't address that.

25 Q So --

13

1 A I did provide and I did put together lists.
2 Now, whether or not that was the same, I assume it
3 is.

4 MR. FOWLER: And just so it's clear, John,
5 we're talking about publicly available, published
6 literature that was put together by Dr. Ellis. We
7 sent you a copy of the same things that we sent to
8 the attorneys in the Moore case in response to the
9 agreement we had to provide information or literature
10 upon which the experts would or might rely.

11 MR. HOAG: Greg, I would really appreciate
12 it if you would let me ask the questions to the
13 witness rather than you answer the questions. We
14 don't --

15 MR. FOWLER: I'm trying to explain.

16 MR. HOAG: I don't need you to explain. I
17 want the witness to explain.

18 BY MR. HOAG:

19 Q Now, Dr. Ellis, you told me that you don't
20 know what documents we were sent; is that correct?
21 And by we, I mean the law office of Stanley
22 Rosenblatt.

23 A I did not personally send them.

24 Q Did you prepare a list of documents that
25 were going to be sent to the law office that I work

14

1 for?

2 A I did not personally put together a list
3 specifically for that. It is my understanding that
4 the same list that was put together for the previous
5 case was sent.

6 Q Did you prepare that list?

7 A I was involved in preparing it, yes. And
8 it was prepared not just in one day. Obviously there
9 were many, many hours that went into literature
10 searches and reviews in getting those documents put
11 together.

12 Q You said you were involved in preparing the
13 list. Who else was involved?

14 A Some of the people on my staff, some of the

15 people in the library and other folks that did
16 provide documents on relevant issues.
17 Q Now, you said it was a literature search;
18 is that correct?
19 A What was a literature search?
20 Q Well, that's what I want to know. You just
21 told me there was a literature search that was done
22 to prepare this list of documents, correct?
23 A Yes.
24 MR. FOWLER: I'm going to object to the
25 reference to documents. We're talking about

15

1 literature, not documents.
2 BY MR. HOAG:
3 Q Is that correct, ma'am?
4 A Yes. We reviewed the literature --
5 MR. FOWLER: Same objection.
6 THE DEPONENT: -- to prepare that list.
7 BY MR. HOAG:
8 Q When you say, we, it was numerous people
9 and not just you, correct?
10 A That's correct.
11 Q And it included attorneys, correct?
12 A Some of the attorneys were involved, yes.
13 Q Okay. And did the attorneys sometimes
14 select what literature would be included on that
15 list?
16 A I had reviewed all of the information and
17 had, basically had reviewed over a long period of
18 time all the information that was involved on that
19 list.
20 Q How many articles are on that list, ma'am?
21 A Oh, I would not even want to hazard a
22 guess.
23 Q Have you read all of those articles?
24 A Yes. I have reviewed most of them, yes.
25 Q Some of them you have not read; is that

16

1 correct?
2 A Not completely.
3 Q So you had not completely read all of the
4 articles on the list of articles that you're going to
5 rely on, correct?
6 A Correct.
7 Q How are you going to rely on them if you
8 haven't read them?
9 A The issue here is that the complete
10 literature is provided and is considered to make the
11 best judgment possible on any question brought forth,
12 and that is what that list represents.
13 Q When you say, the complete literature, what
14 do you mean?
15 A Well, the complete literature is that that
16 I think is pertinent to some of the issues that I am
17 supposed to be testifying on, and I think that it's
18 appropriate to look at the complete literature to get
19 an understanding of the broad based base of
20 information that's available on the topics before an
21 opinion is rendered.
22 Q Are you prepared to render opinions today?
23 A In some situations, yes, in other
24 situations, I would have to review more specifically
25 the question at hand.

1 Q If you -- but you haven't prepared to
2 render all the opinions you're ready to render at
3 trial; is that correct?

4 MR. FOWLER: I'll object, she said she's
5 ready to respond to questions.
6 BY MR. HOAG:

7 Q You don't intend to render opinions that
8 you haven't done all the research that you need to
9 do --

10 A Absolutely not.

11 Q So anything that I ask you today, you're
12 not going to do additional research to answer it
13 later; is that correct?

14 A I don't know what you're going to ask me
15 today.

16 Q So there may be things that you're going to
17 research after I ask you --

18 MR. FOWLER: I object to that, that's a
19 partial hypothetical. Let's ask the questions and
20 see what the answers are.

21 MR. HOAG: Greg, you can object, but I can
22 ask the questions.

23 MR. FOWLER: That's what I'm suggesting
24 that you do.

25 MR. HOAG: That's what I'm trying to do,

1 Greg. Obviously you don't want me to.

2 MR. FOWLER: No, I would like you to ask
3 the questions. I would like for you to get there.
4 BY MR. HOAG:

5 Q So there's going to be questions that I ask
6 you that you're going to do research about later
7 rather than now; is that correct?

8 MR. FOWLER: I object to the form of the
9 question. It's misstating her testimony.

10 BY MR. HOAG:

11 Q Is that correct, ma'am?

12 A I would certainly take advantage of all
13 information that is available to me and would not
14 eliminate any information that became available to me
15 at any time, in order to render an opinion based on
16 the current information. So therefore, if
17 literature, a report or a document comes available to
18 me tomorrow, I would consider it, and I think that's
19 appropriate.

20 Q Okay. Referring to your list of documents
21 that were faxed to us, did you know it was 118 pages
22 long? Did you know that?

23 MR. FOWLER: Object to the form of the
24 question. It's not documents, it's literature.

25

1 BY MR. HOAG:

2 Q Did you know that, ma'am?

3 A Like I said before, I cannot say how many
4 pages it was. I did not count the pages, nor did I
5 memorize how many was in the original.

6 Q You don't know how many pages were sent to
7 us and you don't know how many total journal articles
8 or other literature were on there; is that correct?

9 A I know there were a lot.

10 Q Do you have that in front of you now?

11 A No.
12 Q You don't have it with you now, the 118
13 pages of articles and literature you're going to rely
14 on; is that correct?
15 A I don't.
16 Q Is that correct?
17 A That's correct.
18 Q Okay. Well, on page 4 of the 118-page list
19 that you're going to rely on, number 55 is an article
20 called, Smoking in Rebelliousness, a Longitudinal
21 Study from Childhood to Maturity. Have you read that
22 article?
23 MR. FOWLER: I object to the form of the
24 question.
25

20

1 BY MR. HOAG:
2 Q Have you read that article?
3 A Not thoroughly, no.
4 Q Do you know what year it was published?
5 A No, I definitely don't.
6 Q Do you know what journal it was published
7 in?
8 MR. FOWLER: I'm going to object. That is
9 a long list of literature. This isn't a memory
10 contest.
11 BY MR. HOAG:
12 Q Do you know what journal it was published
13 in, ma'am?
14 A No, I don't.
15 Q Do you know anything at all about what the
16 article is about?
17 A Smoking in rebelliousness.
18 Q That's the title of the article. Do you
19 know anything at all about the article?
20 MR. FOWLER: Object to the form of the
21 question.
22 THE DEPONENT: I do not recall.
23 BY MR. HOAG:
24 Q So if I asked you specifically about the
25 articles that are in this 118-page list, your answers

21

1 are likely to be similar to the one I just asked; is
2 that correct?
3 MR. FOWLER: Object to the form of the
4 question.
5 THE DEPONENT: Depends on which article
6 you're talking about.
7 BY MR. HOAG:
8 Q Which articles are you familiar with that
9 are on that 118-page list?
10 MR. FOWLER: Object to the form of the
11 question.
12 BY MR. HOAG:
13 Q You can answer.
14 A Which specific articles?
15 Q Yes.
16 A I'm familiar with quite a few of them, but
17 obviously I don't have the list in front of me, and I
18 usually rely on the, look at the data in order to
19 provide opinions, rather than rely on memory. There
20 is, as you know, a lot of information in that list.
21 Q You usually rely on looking at data in

22 order to answer questions?
23 A Absolutely.
24 Q You didn't even bring the list with you
25 today?

1 MR. FOWLER: Look, that's inappropriate, an
2 inappropriate question. I object to that.
3 BY MR. HOAG:
4 Q And you didn't bring the list with you
5 today, ma'am?
6 MR. FOWLER: You didn't ask her to.
7 THE DEPONENT: The list does not include
8 data.
9 BY MR. HOAG:
10 Q Did you bring copies of these articles with
11 you?
12 A I did not.
13 Q In other words, to answer questions about
14 the contents of the articles, would you need the
15 articles in front of you, ma'am?
16 A Yes.
17 Q Did anyone instruct you not to bring
18 anything with you today?
19 MR. FOWLER: Object to the form of the
20 question.
21 BY MR. HOAG:
22 Q You can answer.
23 A Not that I recall.
24 Q Somebody may have, but you don't remember?
25 MR. FOWLER: Object to the form of the

1 question.
2 BY MR. HOAG:
3 Q Is that right, ma'am?
4 A I don't recall that being discussed.
5 Q What is your current occupation?
6 A I'm senior vice president of R and D.
7 Q R and D means what, ma'am?
8 A Research and development.
9 Q Research and development for what company?
10 A Philip Morris, USA.
11 Q And how long have you held that position?
12 A Since October of 1996.
13 Q Okay. And what is your salary in that
14 position?
15 A It's a little bit over \$200,000.
16 Q When you say, a little bit over, how much
17 over?
18 A I think it's within 210; around there.
19 Q Okay. And was that your salary as of
20 October of 1996 or have you received any pay raises
21 since October of 1996?
22 A No, I just received a pay raise with
23 everybody else. It occurred March 1st or April 1st.
24 Q What was that raise?
25 A That's included in that figure.

1 Q What was your salary prior to the raise?
2 A It was a 7 percent increase, I know that,
3 but I don't know the actual amount.
4 Q So was your salary prior to the raise about
5 \$200,000?
6 A It was under 200,00.

7 Q So with the 7 percent increase in March,
8 it's a little bit more than 200,000?
9 A That's correct.
10 Q And did you receive any bonus?
11 MR. FOWLER: Object to the form of the
12 question. That's vague.
13 THE DEPONENT: When? I mean, yes, I have
14 received bonuses.
15 BY MR. HOAG:
16 Q Did you receive any bonuses in the past 12
17 months?
18 A Yes.
19 Q What bonuses or bonus?
20 A We have an annual incentive compensation
21 program, and I received that bonus the end of
22 January.
23 Q And how much was your bonus?
24 A As I recall it was, before taxes, around
25 \$80,000.

25

1 Q And you say, annual incentive program.
2 What is that?
3 A It's a program that employees at certain
4 grade levels are eligible for; that is basically to
5 provide incentive compensation on an annual basis to
6 those employees.
7 Q And what is the criteria for receiving
8 incentive compensation?
9 A There are set criteria in terms of
10 individual performance, department performance,
11 company performance.
12 Q And what are the criteria for company
13 performance?
14 A It relates to obviously how well the
15 business is doing.
16 Q When you say, how well the business is
17 doing, what do you mean?
18 A Meaning financial measures.
19 Q For example?
20 A For example, income from operations or
21 profits or work on certain issues. Basically relates
22 to how well the business is running, and there are a
23 lot of measures for that.
24 Q Okay. So the profitability of the company
25 comes into play for decisions regarding bonuses; is

26

1 that correct?
2 MR. FOWLER: Object to the form of the
3 question.
4 BY MR. HOAG:
5 Q Is that correct?
6 A I don't make those decisions, but yes,
7 that's some of the criteria. Yes.
8 Q So the more profitable the business is, the
9 more likely you'll receive a bonus; is that correct?
10 MR. FOWLER: Object to the form of the
11 question.
12 THE DEPONENT: Yes.
13 BY MR. HOAG:
14 Q Is there some kind of weighted measurement
15 for how much profit the company receives in order to
16 determine how much of a bonus you will receive?
17 A No, that would be considered in the

18 deferred profit sharing program.
19 Q So the deferred profit sharing --
20 A Is a different program.
21 Q Tell me about the deferred profit sharing
22 program.
23 A Well, all salaried employees are eligible
24 for the deferred profit sharing program. And that is
25 based on the amount of profits, and there is a cap on

27

1 that.
2 Q And what is the cap on it?
3 A Fifteen percent of your salary.
4 Q How much?
5 A Fifteen percent.
6 Q Okay.
7 A I'm sorry, of the profits.
8 Q I'm sorry. I think I misunderstood part of
9 your answer.
10 A Fifteen percent of the profits, I think, is
11 the cap.
12 MR. FOWLER: John, could you hold on for a
13 second? Somebody has entered the room. We need to
14 answer a question. I apologize for interrupting.
15 (Recess taken)
16 MR. FOWLER: John, you can go ahead.
17 MR. HOAG: Okay. Is there anyone new in
18 the room?
19 MR. FOWLER: No, the secretary who arranged
20 the conference room just came up to make sure that
21 everything was okay.
22 BY MR. HOAG:
23 Q Okay. Well, I'm going to need to ask you a
24 few clarification questions on the deferred profit
25 sharing program. You said there is a 15 percent cap

28

1 on the amount of profits; is that what you said?
2 MR. FOWLER: I object to the form of the
3 question.
4 THE DEPONENT: No, I think that's required
5 by law, that only 15 percent of the profits can go
6 into an employee's deferred profit sharing program.
7 BY MR. HOAG:
8 Q Okay. So for example, if the company made
9 \$100,000,000 in profits, \$15,000,000 of it could go
10 into deferred profit sharing?
11 A Again, I'm not involved in the
12 administration of that program, so I would not want
13 to pass judgment on that statement.
14 Q Okay. What benefits did you receive in the
15 past 12 months on the deferred profit sharing
16 program?
17 A I really don't recall. I get a statement
18 at home, and it goes into, obviously, a tax shelter.
19 And I cannot recall those figures at this time, or
20 when they're credited.
21 Q Do you get a certain percentage of the
22 profit that Philip Morris receives as part of its
23 deferred profit sharing program?
24 A I don't understand your question.
25 Q What exactly is the formula that you, that

29

1 is applied, in other words, to provide you with
2 compensation under the deferred profit sharing

3 program?
4 A My understanding -- and this may or may not
5 be absolutely correct, my understanding is that there
6 is a total cap on the amount of profits that can go
7 to employees, and it's divvied up based on an
8 employee's salary.

9 Q Okay. So if you make \$50,000 a year, for
10 example, you would get one-fourth as much as a person
11 who makes \$200,000 a year; is that correct?

12 A Those specifics -- I really don't know what
13 the formula is.

14 Q Do you get more if you make more money in
15 your base salary?

16 A I would expect so, yes.

17 Q Okay. And you get, do you receive an
18 annual statement from the company on how much you've
19 received from deferred profit sharing?

20 A Actually, I think it's a quarterly
21 statement, because the funds, you can switch funds
22 from different categories; stocks or bonds or just a
23 general interest fund.

24 Q So part of the deferred profit sharing
25 program includes stock in Philip Morris?

30

1 A It can. That's one of the options that an
2 individual can select to put their money.

3 Q Did you select that option?

4 A Some of my funds are in Philip Morris
5 stock, yes.

6 Q What percentage?

7 A I really don't recall at this time.

8 Q Is it more than half of the profit sharing
9 amount, more than 50 percent?

10 A My understanding of how it was handled is
11 that most of it was in Philip Morris stock, and that
12 in 1993 when Marlboro Friday occurred and the stock
13 went down, I kept all of those funds in Philip Morris
14 stock, but all new contributions went and were
15 separated out into other funds. Therefore, it is a
16 very complicated mix at this time and is dependent on
17 contributions, since 1993, and I can't recall the
18 exact figures.

19 Q What is the approximate value right now of
20 your deferred profit sharing program?

21 A It's in the range of about \$400,000 to
22 \$500,000, as I recall.

23 Q And the value of the deferred profit
24 sharing program can go up or down, depending upon the
25 value of Philip Morris stock at the time; is that

31

1 correct?

2 A Or there is a general equity fund which
3 represents the stock market, and yes, it is dependent
4 on the stock market, too, and how much you have
5 allocated into the various funds.

6 Q Okay. Right. Now, as we speak is over 50
7 percent of your deferred compensation program money
8 invested in Philip Morris stock?

9 MR. FOWLER: Objection, asked and answered.
10 BY MR. HOAG:

11 Q You can answer.

12 A Again, I don't recall the exact figures.

13 Q Do you know whether it's more than 50

14 percent?
15 MR. FOWLER: Objection, asked and answered.
16 THE DEPONENT: Again, I don't recall the
17 exact figures.
18 BY MR. HOAG:
19 Q You talked about 1993 Marlboro Friday.
20 What was that?
21 A Marlboro Friday was the day that we decided
22 to lower the price of Marlboro and other premium
23 brands.
24 Q And did something happen to the stock price
25 as a result of that?

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1 A Absolutely.
2 Q What?
3 A Went down dramatically.
4 Q And how much did it decrease by?
5 MR. FOWLER: You know, I'm going to object
6 that this line of questioning is irrelevant.
7 BY MR. HOAG:
8 Q How much did it decrease by?
9 A At the time I think it -- Gee, the exact
10 figures again, I can't recall, but it decreased
11 substantially, within 10 or 20 points, as I recall at
12 this time.
13 Q And has it ever recovered; gone back up?
14 A Yes. Absolutely.
15 Q What's the current trading amount now for
16 the stock?
17 A Well, it was split since then. And
18 currently, I think, as of yesterday it was about 44.
19 Q When you say, it's split since then, what
20 do you mean?
21 A There was a split earlier this year; three
22 for one.
23 Q Okay. So if you had one stock you then had
24 three, once they split; is that correct?
25 A That's right.

33

1 Q Okay. So whatever number of stocks that
2 you had, you've got three times that amount now; is
3 that correct?
4 A That's correct.
5 Q Do you know approximately how many shares
6 of Philip Morris stock you have?
7 A No. I have options. I have restricted
8 stock, and I have some stock through another program,
9 so I really couldn't give you an exact figure.
10 Q When you say, options, what do you mean?
11 A Well, there's a stock option program.
12 Q Is that part of the deferred compensation?
13 A No.
14 Q Is that part of the deferred profit sharing
15 program?
16 A No.
17 Q Did you answer?
18 A Yes, I said no.
19 Q I'm sorry. I can't always hear your
20 answer. That's why I'm asking if you've answered.
21 A No, it's not a part of either one of those.
22 Q Okay. So what stock option program -- how
23 does that work?
24 A Basically it's a program again available to

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25 employees at certain grade levels and above. And
1 again, it's based on their longer term potential in
2 contributing to the company and their performance.
3 Q What grade levels, beginning at what grade
4 level would that be available?
5 A We call it hay grade 14, H-A-Y.
6 Q What hay grade are you?
7 A What hay grade am I? I'm not a hay grade.
8 I'm in a banded category.
9 Q What does that mean?
10 A It means that they have combined grades at
11 the higher levels in the corporation and basically
12 have allowed for mobility and movement and
13 flexibility.
14 Q What would be the banded category -- how
15 many grades of banded?
16 A I really am not an expert at this, because
17 it is a new program. I believe I'm in Category F. I
18 don't know that for sure.
19 Q That's the equivalent to somebody higher
20 than hay grade 14, correct?
21 A Yes.
22 Q Which makes you eligible for the options
23 program, correct?
24 A Yes.
25 Q Is that correct?

35

1 A Yes.
2 Q How long have you been eligible for the
3 options program?
4 A Since the late 1980s.
5 Q Did you take advantage of that at the
6 beginning when you were first eligible?
7 A It is not up to the choice of the
8 individual. It is awarded by your supervisor, based
9 on, again, your long term potential contribution and
10 your performance.
11 Q So has it been awarded to you since the
12 late 1980s?
13 A Yes.
14 Q Consistently every year?
15 A Yes.
16 Q Is it awarded on a yearly basis?
17 A Yes, it has been. It's not guaranteed.
18 Q But so far you have received it every year;
19 is that correct?
20 A Yes.
21 Q Is that correct?
22 A Yes.
23 Q I think what happens is if there's papers
24 moving when you answer the question, it doesn't come
25 across, so I apologize for asking it more than once

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1 if you've answered a question; it's really because I
2 haven't heard it.
3 MR. FOWLER: John, no problem with that.
4 We're not moving any papers. We'll try to make sure
5 that we make our answers as clear as possible.
6 BY MR. HOAG:
7 Q I know it probably sounds annoying for me
8 to go, have you answered it yet? I'm not trying to
9 be annoying, I have not heard the answer. Okay. So

10 beginning -- was it around 1988 that you started to
11 benefit from the options program?

12 A It would be '88 or '89. I'm not sure.

13 Q And exactly how does the options program
14 work?

15 MR. FOWLER: You know, John, just, again,
16 I'm not going to object to the relevancy of all of
17 this. You can go ahead and obviously ask the
18 questions, but I think it's beside the point.

19 BY MR. HOAG:

20 Q Okay. How does the options program work?

21 A Basically management would look at the
22 employees, and there would be a certain amount of
23 funds available. And we would look at those
24 individuals that, based on performance and individual
25 potential contribution in the future, we wanted to

1 put into the program.

2 Q That's how decisions are made regarding
3 eligibility for the program. Once you're accepted to
4 be in the program, what benefit do you receive?

5 A You get a piece of paper that basically
6 gives you a certain number of share options for a
7 certain number of shares of Philip Morris stock. You
8 cannot do anything with that for one year, and then
9 from years one to ten, you have the ability of
10 cashing in those options or buying the stock for the
11 price on the original piece of paper.

12 Q Okay. So for example, if the price of the
13 stock in 1988 is \$30 a share, and then in 1990 it's
14 \$40 a share, you can sell the stock and receive \$10
15 per share for all the options that they give you; is
16 that correct?

17 A Yes, and pay taxes and fees. Yes. But the
18 remaining would be yours, yes.

19 Q The remaining options would be yours?

20 A No, the remaining money, what's left of the
21 \$10 after you pay your taxes and your fees would be
22 yours, yes.

23 Q So when the options are provided, you don't
24 have to ever sell it if you don't want to, but if you
25 choose to, you can sell; is that correct?

1 MR. FOWLER: I object to the form of the
2 question.

3 BY MR. HOAG:

4 Q Is that correct?

5 A When the options are provided, you don't
6 have to sell. You can't sell within one year.

7 Q And even after that year, you don't have to
8 unless you want to.

9 A They expire in ten years.

10 Q Okay. So if the price of the stock ever
11 goes down, you never have to worry about losing any
12 money, correct?

13 MR. FOWLER: Object to the form of the
14 question.

15 BY MR. HOAG:

16 Q Is that correct?

17 A Yes.

18 Q So you can only profit from this, you can't
19 lose any money from it, correct?

20 MR. FOWLER: Object to the form of the

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21 question.
22 THE DEPONENT: It's a piece of paper until
23 you exercise it.
24 BY MR. HOAG:
25 Q Okay. Have you exercised any options since

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1 you've worked for Philip Morris?
2 A Yes.
3 Q How many?
4 A I didn't hear your question.
5 Q I said, how many?
6 A I would estimate around -- I did it twice.
7 And I would estimate the approximate number of shares
8 each time was about 2,000.
9 Q And what was the difference in value of the
10 shares at the time you exercised the options versus
11 the time that you were provided with the options?
12 A Let me correct what I just said. I did it
13 twice. The approximate number of shares the first
14 time was 2,000. The second time I exercised two
15 options, and I think the approximate number was
16 probably more like 4,000. And now, what was your
17 next question, please?
18 Q Okay. When you exercised the options to
19 sell 2,000, what year was that?
20 A It was about two or three years ago.
21 Q And when you exercised the option to sell
22 4,000, what year was that?
23 A Earlier this year.
24 Q Okay. And how much -- when you exercised
25 the option to sell 2,000, how much money did you

40

1 receive before taxes?
2 A I really don't recall. I would estimate it
3 was a little bit over \$100,000, but I don't recall.
4 Q Okay. And when you exercised the option to
5 sell 4,000 this year, how much money did you receive
6 before taxes?
7 A Before taxes? Again, I would say that the
8 approximate amount of money that I got -- and I think
9 taxes were taken out -- was in about the \$200,000
10 category, so.
11 Q And why did you decide to cash in on the
12 option this year for 4,000 shares?
13 A We consulted a financial advisor, and we
14 were diversifying into a number of different areas.
15 Q Did you have any concern that the value of
16 the Philip Morris stock might go down?
17 A No.
18 Q What kind of things affect the value of the
19 Philip Morris stock?
20 MR. FOWLER: I object to the relevance of
21 this.
22 BY MR. HOAG:
23 Q You can answer.
24 A I think that it would probably be more
25 appropriate to ask an analyst, but I think the media

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1 affects it. I think the financial basis of the
2 company affects it. Those are two key areas.
3 Q What about the outcome of lawsuits?
4 MR. FOWLER: Object to the form of the
5 question.

6 BY MR. HOAG:
7 Q Does the outcome of lawsuits affect the
8 value of the stock?
9 A Yes, they could. That also affects the
10 financial aspects of the company.
11 Q What are your duties now in your current
12 position?

13 MR. FOWLER: Would you repeat the question?
14 It didn't come through.

15 BY MR. HOAG:

16 Q What are your current duties in your
17 current position at Philip Morris?

18 A I'm the senior vice president of research
19 and development, and in that capacity I'm basically
20 involved in overseeing the research and development
21 activities of Philip Morris, USA; would include the
22 development of products, product technologies,
23 processes and providing information to the
24 corporation.

25 Q How many people do you supervise?

1 A In the USA --

2 Q Pardon me?

3 A In the USA I would say just under 600.

4 Q And do you supervise people in other parts
5 of the world?

6 A Yes.

7 Q Do you supervise people in other parts of
8 world?

9 A Yes.

10 Q How many -- well, how many people?

11 A Under 200.

12 Q What other parts of the world do you
13 supervise people in, in your current position?

14 A Europe and Asia.

15 Q And what are the occupations of the people
16 that you supervise in other parts of the world?

17 A They're scientists.

18 Q Any other occupations, other than
19 scientists?

20 A Other than those that support the
21 scientists, no.

22 Q Other than the forms of compensation that
23 you have described to me that you received from
24 Philip Morris, are there any other forms of
25 compensation that you received or receive?

1 A From Philip Morris?

2 Q Yes.

3 A Well, other forms of compensation; there is
4 a long term incentive compensation program.

5 Q What is that?

6 A It's another incentive compensation program
7 that's based on a longer period of time, in other
8 words, and it's flexible, but basically there is one
9 now that is in force that is three years long.

10 Q And how does that -- what forms of
11 compensation do you receive for that?

12 A A check.

13 Q And when is the last time you received one
14 of these checks?

15 A Couple of years ago.

16 Q How much was the check?

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17 A Again, I think it was in the vicinity of
18 about \$80,000.
19 Q Okay. And that's in addition to bonuses,
20 correct?
21 A Correct.
22 Q How is it decided how much you get for that
23 compensation?
24 A My understanding is that it's based on a
25 certain percentage of your salary over a three year

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1 period of time, and that is then adjusted based on
2 your performance and contribution, but the base
3 amount is a certain percentage.
4 Q Okay. Now, are there any other forms of
5 compensation other than those you have already
6 discussed?
7 MR. FOWLER: At Philip Morris?
8 BY MR. HOAG:
9 Q At Philip Morris.
10 A On occasion there have been awards,
11 restricted stock has been awarded.
12 Q And what does that mean?
13 A What that means is that on occasions
14 individuals would have restricted stock awarded to
15 them, and then after a period of time, normally,
16 again, it's a longer term program, say three years,
17 that stock would be theirs.
18 Q And how much restricted stock has been
19 issued to you?
20 A I think the total number of shares is in
21 the vicinity of 7,000.
22 Q And have you sold any of those yet?
23 A No. But not all of those are mine right
24 now. Matter of fact, none of those, at this point,
25 are available to me.

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1 Q When do they become available to you?
2 A One portion becomes available in June, and
3 then the larger amount, a larger amount of that
4 portion comes available in about two and a half
5 years.
6 Q Okay. Are there any other forms of
7 compensation from Philip Morris?
8 A That's all that I can think of right now.
9 Q Okay. Are there any companies that you
10 work for other than Philip Morris that you receive
11 compensation from?
12 A No.
13 Q Now, the 600 people that you supervise in
14 the United States, are they all scientists?
15 A They're scientists, engineers, product
16 developers, yes, and then there's supporting
17 individuals, obviously.
18 Q The position that you're in now, who held
19 it before you?
20 A Dr. Ken Houton, H-O-U-T-O-N.
21 Q And why did he leave the position?
22 A He retired.
23 Q What month did he retire? What year and
24 what month?
25 A Last October, 1996.

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1 Q Okay. And what was the position you held

2 immediately before the current position you're in?
3 A I was the vice president of research and
4 development. That was, that appointment was made in
5 July of 1996, as a prelude to Ken's retirement.
6 Q What do you mean, as a prelude to Ken's
7 retirement?
8 A Well, it was an indication that I would
9 succeed him, and it was a transition position.
10 Q Was it a position that was just formed for
11 you that hadn't previously existed?
12 MR. FOWLER: Object to the form of the
13 question.
14 BY MR. HOAG:
15 Q You can answer.
16 A I would not characterize it that way.
17 Q Was it a position that previously existed
18 before you held it?
19 A A position titled vice president of R and D
20 previously existed, yes, but this was a situation
21 where there was an interim transition within the
22 organization, where the staff reported to me and I
23 reported to Ken, so I was the only direct report for
24 about three months.
25 Q Prior to the vice president of research and

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1 development position, what was your position
2 immediately prior to that?
3 A Vice president of product development.
4 Q And how long did you hold that position?
5 A Approximately one year.
6 Q From about July of '95 till '96?
7 A Little bit before that, little bit more
8 than a year.
9 Q What were your duties as vice president of
10 product development?
11 A I oversaw product development and
12 evaluation.
13 Q What types of products?
14 A Cigarettes.
15 Q Anything else?
16 A No.
17 Q And what did you do immediately prior to
18 that?
19 A I was the director of research.
20 Q Director of research for the entire
21 company?
22 MR. FOWLER: Sorry, John, you were cut out
23 again.
24 BY MR. HOAG:
25 Q You were the director of research for the

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1 entire company?
2 A For Philip Morris, USA, yes.
3 Q And what years did you hold that position?
4 A Approximately three years.
5 Q That would be from 1992 until '95; is that
6 correct?
7 A In that vicinity, yes.
8 Q Did you supervise anyone in any other
9 countries other than the United States at that time?
10 A Yes.
11 Q What other countries?
12 A There was Europe; Belgium and Germany.

13 Q And who did you supervise? What positions
14 did you supervise?
15 A Scientists, about 150.
16 Q In Europe, Belgium and Germany?
17 A In Belgium and Germany.
18 Q Okay. And prior to the position you held
19 as director of research in 1992, what position did
20 you have?
21 A I was the director of applied research.
22 That was at the point that research was split.
23 Q And you were director of applied research
24 from when to when?
25 A For approximately a year or two.

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1 Q From 1990 to '92?
2 A In that vicinity.
3 Q Okay. And when you say that was the year
4 that was split, what do you mean?
5 A We were, there were two directors of
6 research; one a director of applied research and one
7 a director of basic research.
8 Q So around 1990 it was split into applied
9 and basic, and you were put into the position of
10 director of applied; is that correct?
11 A That's correct.
12 Q Okay. What did you do prior to 1990?
13 A I was the manager of biochemical research.
14 Q From when to when?
15 A Approximately 1989.
16 Q '89 to '90?
17 A Yeah, it was approximately a two year
18 period of time, as I recall.
19 Q And prior to '89, what was your position?
20 A I was a section leader in the biochemical
21 research division.
22 Q From when to when?
23 A Approximately one year before that, so,
24 '88.
25 Q And prior to being section leader in the

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1 biochemical research division, what position did you
2 hold?
3 A I was technical coordinator for that same
4 division.
5 Q What years?
6 A Again, for approximately one year.
7 Q That would be?
8 A '87.
9 Q '87. Prior to '87 what position did you
10 hold?
11 A I was a project leader in that same
12 division.
13 Q What years?
14 A I didn't hear you.
15 Q What years were you project leader?
16 A I was project leader for, gee, probably
17 about three years.
18 Q That would be, like, from '84 to '87?
19 A '83 to '87. Again, it depends on the
20 beginning or the end of the year, yes.
21 Q And prior to that, what was your position?
22 A I was a research scientist, and I worked in
23 the lab.

24 Q That was prior to 1982?
25 A 1983, prior to 1983.

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1 Q Have you ever heard of the nitrosamine
2 group?
3 MR. FOWLER: Object to the form of the
4 question.
5 BY MR. HOAG:
6 Q You can answer.
7 A We never used that term.
8 Q Do you know what the nitrosamine group is?
9 MR. FOWLER: Object to the form of the
10 question.
11 THE DEPONENT: We did not call any group in
12 R and D formally the nitrosamine group.
13 BY MR. HOAG:
14 Q You didn't call it formally the nitrosamine
15 group?
16 A Right.
17 Q Did you call it informally the nitrosamine
18 group?
19 A No, we called it chemical studies of
20 condensate or smoke condensate studies.
21 Q And the chemical studies or smoke
22 condensate studies, did those include looking at
23 nitrosamines?
24 A Yes.
25 Q And when did that begin?

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1 MR. FOWLER: Object to the form of the
2 question; vague.
3 THE DEPONENT: That began probably in the
4 70s. But again, it was not a distinct group
5 necessarily. It was a number of people within the
6 smoke chemistry group.
7 BY MR. HOAG:
8 Q When you worked in the lab prior to '83,
9 when did you begin?
10 A 1980.
11 Q Was that the first position you held with
12 Philip Morris, in 1980?
13 A Yes.
14 Q How did you come to work for Philip Morris?
15 A I was at the time an instructor at the
16 Medical College of Virginia. And at that time an
17 individual, Dr. Jim Charles, was getting his PhD down
18 at the Medical College of Virginia, and I handed him
19 my CV. And there was a position open at the time for
20 an individual to look at the chemistry of smoke, and
21 they hired me.
22 Q Okay. So your first position was to look
23 at the chemistry of --
24 A That's correct.
25 Q -- smoke?

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1 A That's correct.
2 Q And how many other scientists or chemists
3 at Philip Morris were looking at the chemistry of
4 smoke at the time you were hired?
5 A It would be very difficult to ascertain an
6 exact number. There were a lot of people looking at
7 routine chemistry measurements. The group I was
8 involved in was doing more research in terms of

9 looking at chemistry of smoke, how it's impacted by
10 various things and looking at ways of modifying the
11 chemistry.

12 Q Was part of the process to look at the
13 flavorants or additives in the cigarettes?

14 MR. FOWLER: Could you restate the
15 question, John?

16 BY MR. HOAG:

17 Q Was part of the job to look at the
18 flavorants or additives in the cigarettes?

19 A Part of what job?

20 Q Part of the job that you had when you first
21 started to work for Philip Morris.

22 A No.

23 Q No?

24 A No.

25 Q Was that ever part of your job, to look at

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1 the chemical components of the flavorants or the
2 additives in cigarettes?

3 MR. FOWLER: I'm going to object to the
4 form of the question. When you say, you, do you mean
5 Dr. Ellis, specifically?

6 BY MR. HOAG:

7 Q I mean her specifically or anyone she
8 supervised.

9 A At that time? Any time?

10 Q Yes.

11 A I personally never was involved in working
12 in the lab analyzing flavors; other people at Philip
13 Morris have been.

14 Q When did -- to your knowledge, when did
15 Philip Morris first start measuring the level of
16 nitrosamines in sidestream smoke?

17 MR. FOWLER: I object to the form of the
18 question. You can go ahead and answer.

19 THE DEPONENT: Again, I'm not as familiar
20 with the specific dates. Obviously, we have had some
21 research in sidestream smoke in our laboratory in
22 Switzerland, but I would say certainly nitrosamines
23 were looked at in mainstream smoke back in the '70s,
24 and whether or not sidestream was looked at at that
25 time specifically, I'm not sure.

55

1 BY MR. HOAG:

2 Q What is the earliest time you're aware of
3 that the nitrosamine level in sidestream smoke was
4 looked at at Philip Morris?

5 A Certainly in the '80s, I'm aware of that.

6 Q Would it have been in the earlier '80s?

7 A Yes.

8 Q Prior to 1982?

9 A I wouldn't be aware of that.

10 Q Prior to 1983?

11 A I wouldn't be aware of that. My
12 recollection is 1984, '85, was the time frame, that I
13 can recall.

14 Q And why are you able to recall that as a
15 time frame?

16 A Because of a report that I have read.

17 Q What report did you read?

18 A Some of the reports that related to the
19 work that was done in Neuchatel, N-E-U-C-H-A-T-E-L,

20 Switzerland.

21 Q When did you read that report?

22 A Well, I read it back in the 80s and was
23 familiar with the work back in the 80s.

24 Q And what was the content of the report?

25 A There were numerous reports and a lot of

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1 work being done in Richmond on nitrosamines.

2 Q What was the work being done in Richmond on
3 nitrosamines?

4 A The work basically in the smoke chemistry
5 group involved looking at basic methods,
6 understanding how nitrosamines were formed,
7 understanding then, potentially, how we could reduce
8 them.

9 Q And what was done in order to understand
10 how nitrosamines were formed?

11 A We looked at the different tobaccos. We
12 looked at the precursors, tried to identify the
13 precursors. We looked at various ways of trying to
14 effect and understand the formation and different
15 ways of formation of nitrosamines in smoke.

16 Q Were there any chamber studies done?

17 MR. FOWLER: Object to the form of the
18 question.

19 THE DEPONENT: There were. Obviously we
20 did chamber studies.

21 BY MR. HOAG:

22 Q Were any chamber studies done to measure
23 the nitrosamine level in sidestream smoke?

24 A Ever?

25 Q Well, right now we're talking about the

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1 '80s.

2 A Yes, chamber studies were done.

3 Q During those chamber studies, was the
4 sidestream smoke ever aged at all?

5 A In some situations, yes.

6 Q What were the situations where it would be
7 aged?

8 A It depended on the experimental protocol.

9 Q When you say, the experimental protocol,
10 what do you mean?

11 A What I mean is that -- and where I think
12 we're getting confused here, there are different
13 analytical methodologies for looking at smoke. There
14 is a certain collection method for mainstream smoke,
15 and then you analyze mainstream smoke. There's a
16 certain collection methodology for sidestream
17 smoke -- we can call that fresh sidestream smoke --
18 and there's obviously methodologies for collecting
19 fresh sidestream smoke. And then there was a way of
20 looking at aged sidestream smoke, and that's another
21 methodology.

22 Q What's the methodology for looking at aged
23 sidestream smoke?

24 A Basically it's introducing the smoke from a
25 large number of cigarettes into a room and collecting

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1 from that room materials, after a certain period of
2 time. And that time frame of aging can vary,
3 depending on the experimental protocol.

4 Q Now, when you say, room, is that separate

5 from a chamber?
6 A It isn't separate from a chamber. You can
7 call it a chamber, you can call it a room.
8 Q Is it a stainless steel chamber or room; is
9 that correct?
10 A Generally we call it the sidestream chamber
11 or we call it the material room. So the terms, in
12 that sense, are used interchangeably.
13 Q And when the sidestream smoke was aged,
14 what type of cigarettes were used for these
15 measurements?
16 A A variety of different cigarettes.
17 Q When you say, a variety of different
18 cigarettes, right now I'm talking about 1980. Are
19 you talking about reference cigarettes?
20 A Reference or experimental cigarettes that
21 are made in order to control conditions were
22 certainly used, and commercial cigarettes were also
23 used.
24 Q Okay. Were commercial cigarettes used to
25 measure the level of sidestream, of aged sidestream

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1 smoke back in the 1980s?
2 MR. FOWLER: Object to the form of the
3 question.
4 THE DEPONENT: Yes.
5 BY MR. HOAG:
6 Q And when commercial cigarettes were used
7 back in the '80s on sidestream smoke, aged sidestream
8 smoke measurements, did they also include nitrosamine
9 measurements?
10 A In some situations, yes.
11 Q What situations? Under what situations
12 were commercial cigarettes used to measure
13 nitrosamine levels from aged sidestream smoke?
14 A There were a number of commercial
15 cigarettes used in the sidestream chamber in
16 Neuchatel, Switzerland, and there were a number of
17 commercial cigarettes used in the chamber in
18 Richmond. Mainly those studies, though, were focused
19 on sidestream visibility and looking at low
20 sidestream papers and thereby measuring sidestream
21 visibility reduction.
22 Q The ones that were done in Richmond -- when
23 I'm saying ones, I mean the ones where they looked at
24 commercial cigarettes -- did they measure the
25 nitrosamine level in the aged sidestream smoke?

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1 A In Richmond?
2 Q Right.
3 A For commercial cigarettes?
4 Q Yes.
5 A I have no recollection of that ever being
6 done.
7 Q Okay. And in Switzerland during the 1980s,
8 were commercial cigarettes ever used to measure the
9 nitrosamine level in aged sidestream smoke?
10 A Yes.
11 Q And what time in the '80s was that done?
12 A I think we have data around 1987 and
13 forward and maybe even before that.
14 Q How many scientists were working on this in
15 Switzerland in the 1980s, on measuring the

16 nitrosamine level in aged sidestream smoke?
17 MR. FOWLER: Was the question, how many
18 scientists?
19 BY MR. HOAG:
20 Q Yes, in Switzerland were working on
21 measuring the nitrosamine level in aged sidestream
22 smoke in the 1980s?
23 A Well, I think it varied over time, and I
24 was not there, and I really could not represent
25 accurately the number of people.

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1 Q Well, in 1980 was it less or more
2 scientists in the United States who were working on
3 measurements of nitrosamine levels in aged sidestream
4 smoke as compared to the number in Switzerland?
5 A In the 1980s there were definitely more
6 people in Switzerland looking at analyzing sidestream
7 smoke and nitrosamines.
8 Q And how do you know that?
9 A Because there was only one person in the
10 United States that ever looked at nitrosamines in
11 aged sidestream smoke, in Richmond.
12 Q Who was that?
13 A Ray Morgan.
14 Q Why was Ray Morgan the only one in Richmond
15 that did that?
16 A I couldn't answer that. I don't know.
17 Q Was that part of his general
18 responsibilities, to look at nitrosamine levels in
19 aged sidestream smoke?
20 A I don't ever recall that being a specific
21 objective.
22 Q How do you know he did that?
23 A I know that he did a study and have a memo
24 after the study where he tested experimental
25 cigarettes in the chamber.

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1 Q And what date is that memo?
2 A It's in December of 1989.
3 Q What does the memo say?
4 A Basically there were a number of different
5 experimental cigarettes. They had the same cigarette
6 tobacco filler and the paper varied, therefore, it
7 was a controlled condition.
8 Q Does the memo say anything else other than
9 that?
10 A Well, basically he looks at the data
11 associated with the nitrosamines in particular, in
12 the room.
13 Q And what were the findings?
14 A The findings were that there were some
15 increases in NNK relative to normal paper for some of
16 the sidestream papers, but again, some of the
17 increases were not that great. And the variety of
18 NNK analysis is tremendous, and whether or not those
19 were significant is highly questionable.
20 Q And this was written in December of '89?
21 A Correct.
22 Q Who is it written to?
23 A Me.
24 Q And what was your response, if anything, to
25 that memo?

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1 A My response, if anything, to that memo?
2 Q Yes.
3 A In terms of what?
4 Q In terms of any response that you had to
5 the memo that he wrote to you.
6 A It was increased knowledge of certain
7 aspects of sidestream smoke chemistry, and basically
8 that was increasing our knowledge in that area.
9 Q Okay. So then you didn't have any problems
10 with him doing that research; is that correct?
11 A Not at all.
12 Q Did you communicate that to him in writing
13 or orally?
14 MR. FOWLER: I'm sorry, communicate what?
15 BY MR. HOAG:
16 Q Your response to his memo, ma'am.
17 A I didn't have a response to his memo
18 specifically. It was, he was writing a memo that
19 added to the knowledge base, and I accepted the
20 information. There was no specific response.
21 Q And who did this with him? Other than,
22 other than Dr. Morgan, did anyone else participate on
23 this project?
24 A From the nitrosamine analysis standpoint, I
25 believe I had some technicians working with him, and

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1 I think on the room standpoint, in other words, the
2 actual running of the experiment in the room, there
3 were individuals that did that portion of the
4 experiment.
5 Q And he found that the aged sidestream smoke
6 had a higher amount of nitrosamines in it than the
7 sidestream smoke that was not aged?
8 A I would say that's a complete
9 mischaracterization of what I said.
10 Q What did he find?
11 A He looked at controlled cigarettes that had
12 different -- in other words, experimental cigarettes
13 that had different papers on it. And he looked at
14 nitrosamine levels at different periods of time or
15 actually at one time, one aged point.
16 Q And what were his findings?
17 A In some cases for certain parameters in
18 certain cigarettes he could find some increases in
19 certain end points, but based on the known
20 variability in the analysis and potential for what we
21 call artifact formation in the collection of
22 nitrosamines, in particular in the collection of NNK,
23 it is highly questionable as to whether or not any of
24 these results were significant.
25 Q What results did he get?

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1 A In terms of?
2 Q That was communicated to you in the memo.
3 A He got results on certain nitrosamines,
4 nicotine, NNK.
5 Q Numerically, what were those results?
6 A I'm sorry, I didn't hear all of your
7 question.
8 Q Numerically, what were the results?
9 A I don't have that in front of me, and I
10 certainly have not memorized them.
11 Q When was the last time you reviewed this

12 memorandum?
13 A Probably within the last week.
14 Q But you didn't bring that with you today,
15 correct?
16 A No, I certainly didn't.
17 Q Where is that memorandum now?
18 A I mean, it's in the central file at Philip
19 Morris. I have a copy of it.
20 Q Where do you have a copy of it?
21 A It's probably in my -- at this point, it's
22 in a bag in my car.
23 Q You mean, in your car that's parked in the
24 parking lot where you are right now?
25 A That's correct.

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1 Q Okay. Can you go get that memo?
2 MR. FOWLER: We are not going to have the
3 witness running and grabbing memos from her car.
4 We're on the 20th floor, and we're not going to have
5 her do that.
6 BY MR. HOAG:
7 Q Ma'am, can you go get that memo?
8 A Physically?
9 Q Yes.
10 A Physically, I could.
11 MR. HOAG: Well, I would like to take a
12 break and have you find the memorandum.
13 MR. FOWLER: We are not going to have her
14 go chasing down memos every time you come up with
15 something you didn't anticipate. If you wanted to
16 take this deposition in person, you could have
17 brought the memos or anything else you wanted to
18 examine her on. We're not going to have her chasing
19 all over Richmond, getting things for you.
20 MR. HOAG: So you're refusing to allow her
21 to go get the memo?
22 MR. FOWLER: I'm telling you that it's
23 inappropriate for you to be requesting her to run
24 down there to get materials that you didn't
25 anticipate.

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1 MR. HOAG: I've never been provided with a
2 copy of this memo.
3 MR. FOWLER: You've been provided with
4 ample discovery in this case.
5 MR. HOAG: I've never been provided a copy
6 of this memo. I'm not going to get in an argument
7 with you, but I will certify for the record that I'm
8 asking her to do this and you're instructing her not
9 to do it.
10 MR. FOWLER: Let's take a break.
11 MR. HOAG: I'm still on the record. Is the
12 court reporter there?
13 THE COURT REPORTER: Yes, sir.
14 MR. HOAG: I'm still on the record, and I'm
15 objecting to the instruction to the witness not to
16 provide me with documents that she has in her
17 possession that she has testified about.
18 MR. FOWLER: They're not in her possession.
19 MR. HOAG: And she says she can't remember
20 everything in it without looking at it, and now she's
21 been instructed not to go get it, when it's down in
22 the car and it would take her five minutes to do it.

23 I'm objecting to that, and I will certify the
24 question. I won't be able to obviously complete this
25 deposition until I have access to that memo, so I'm

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1 making a record now. If you want to take a break
2 now, that's fine. How long do you want?
3 MR. FOWLER: How about ten minutes? Is ten
4 minutes long enough for you, Doctor?
5 THE DEPONENT: That's fine.
6 MR. FOWLER: How long do you anticipate
7 this deposition will last?
8 MR. HOAG: I would say it will be over by
9 one o'clock.
10 MR. FOWLER: One o'clock our time, eastern
11 time?
12 MR. HOAG: Yeah, I'm talking about one
13 o'clock your time.
14 MR. FOWLER: Just wanted to make sure.
15 MR. HOAG: You're 10:30 there now, right?
16 MR. FOWLER: Correct.
17 MR. HOAG: Hello?
18 MR. FOWLER: Yes. Correct.
19 MR. HOAG: So you want a ten-minute break?
20 MR. FOWLER: Yeah, exactly. Why don't we
21 take ten minutes?
22 MR. HOAG: I'll just stay on the line; keep
23 the line open.
24 (Recess taken)
25 MR. FOWLER: We told you we were going to

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1 take 10 minutes. We actually took almost 20, because
2 15 minutes was spent walking down to Dr. Ellis' car
3 and picking up the document that you requested we
4 get. That will be the last time we do that. But on
5 reflection, we agreed simply to go down and do that
6 this one time. We're actually parked, Dr. Ellis is
7 parked in a different building, so we had to walk
8 down and walk over to the other building and go down
9 to that parking lot, but back we are and ready to
10 continue.
11 MR. HOAG: Okay. Could we have that
12 document marked as Plaintiff's Exhibit 1?
13 MR. FOWLER: Sure, we will do that. Yes.
14 (Plaintiff's Exhibit
15 Number 1 was marked)
16 BY MR. HOAG:
17 Q Okay. I'm just going to assume that's
18 already marked. And would you look at Plaintiff's
19 Exhibit 1, Doctor?
20 A Yes.
21 Q You recognize it?
22 A Yes.
23 Q What is it?
24 A It's a memo dated December 5th, 1989, from
25 W.R. Morgan to Dr. C.K. Ellis, entitled, Sidestream

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1 Chamber Nitrosamine Results, Low Sidestream
2 Subjective-Analytical Study.
3 Q And what does it say?
4 MR. FOWLER: Do you want her to read the
5 document?
6 BY MR. HOAG:
7 Q How long is the document?

8 A It's two pages and then has attached two
9 pages of attached chromatograms and -- excuse me,
10 three pages of attached chromatograms; three pages of
11 attached chromatograms and four pages of attached
12 tables.

13 Q Yes, I would like you to read the two-page
14 document, not the tables, but the document itself.

15 A Sidestream chamber nitrosamine data have
16 been obtained on three cigarette types prepared for
17 the "low sidestream subjective-analytical study" --
18 with a reference. The three cigarettes studied were
19 X8D9XN (Marlboro paper), X8D9XO (Mg(OH) 2 paper) and
20 X8D9XQ (double CaCo 3, paper 2) all containing 2I
21 filler blend (J9RX).

22 Chamber smoke samples were collected on
23 Extralut, registered trademark, three tubes wetted
24 with four mL of pH 4.5 citrate/phosphate buffer
25 containing ascorbic acid. Five tubes were collected

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1 for each of three chamber runs for each code. The
2 five tubes from each run were each eluted with 50 mL
3 of 80/20 methylene chloride-acetone mixture, the
4 eluant combined into one sample and concentrated to 2
5 mL final volume. GC/TEA analysis for VNA and TSNA
6 was obtained on the final work-up solution.

7 Figure one shows a representative
8 chromatogram for the VNA/TSNA calibration standard
9 (IA) and each of the three cigarette types X8D9XM
10 (1B), X8X9XO (1C), and X8D9XQ (1D).

11 Q Let me stop you right there. Those codes
12 for cigarettes, are those actual commercial
13 cigarettes or are they reference cigarettes?

14 A Those are reference cigarettes.

15 Q Okay. Now, were any actual commercial
16 cigarettes tested based on this memo?

17 A No.

18 Q And were any of these cigarettes tested for
19 the level of NNK nitrosamines?

20 A Yes, in sidestream, in the chamber.

21 Q Okay. So this measured the NNK
22 nitrosamines?

23 A And other things.

24 Q Okay. What were the results related to the
25 NNK nitrosamines?

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1 A Table one gives the nitrosamine results for
2 the samples collected -- I'm swinging down to the
3 results section of the memo.

4 Q Okay.

5 A For the samples collected in the sidestream
6 chamber.

7 MR. FOWLER: And let the record reflect
8 that Dr. Ellis is actually reading from the document
9 now.

10 BY MR. HOAG:

11 Q Right.

12 A As can be seen in table one there is an
13 increase of approximately 50 percent in DMN and NPYR
14 and a 65 percent increase in NNK for X8D9XQ relative
15 to X8D9XM. The changes in NNN and NAT are not
16 considered significant based on the standard
17 deviations measured for these compounds. X8D9XO
18 shows smaller but significant increases in DMN and

19 NNK than X8D9XQ. The changes in NPYR, NNN and NAT
20 for X8D9XO are not significant.

21 It is --

22 Q Excuse me, the 65 percent increase in NNK
23 that you were reading, that was in comparison to
24 another reference number?

25 A Right, relative to another controlled

1 cigarette.

2 Q Okay. Was there any comparison of the
3 sidestream smoke, aged and not aged -- as far as the
4 NNK levels are concerned -- in this memo?

5 A Based on what I understand from this, no.

6 Q Okay. So this memo was not concerning any
7 measurements of commercial cigarettes and it also was
8 not concerning any measurements of aged sidestream
9 smoke; is that correct?

10 MR. FOWLER: Object to the form of the
11 question.

12 BY MR. HOAG:

13 Q Is that correct?

14 A It did concern aged sidestream smoke. You
15 asked if it concerned fresh sidestream, initially.

16 Q Okay. In what way did it concern aged
17 sidestream smoke?

18 A Normally in the standard runs of the
19 chamber those cigarettes were, the samples were taken
20 one hour after smoking, and that was generally the
21 standard protocol. However, I'm trying to see where
22 that is stated in the memo, and I don't see it. It
23 does not indicate -- I would have to just take a
24 second to make sure that I cover all the paragraphs.

25 It does not indicate the time frame, to the

1 best of my knowledge, in this memo. It would not
2 have been run in the chamber if it was intended to do
3 a fresh sample. However, it would have been checked
4 by another method, as I indicated previously.

5 Q Do you know why commercial cigarettes were
6 not tested?

7 A The best answer to that is that there would
8 be an uncontrolled situation, and it would be very
9 difficult to make any scientific conclusions.

10 Q Was there a standing policy not to test
11 commercial cigarettes for their NNK nitrosamine
12 level?

13 MR. FOWLER: I object to the form of the
14 question.

15 BY MR. HOAG:

16 Q You can answer.

17 A We have tested commercial cigarettes.
18 Commercial cigarettes, data on commercial cigarettes
19 was available in the literature also. The focus of
20 this group and the research involved was to look at
21 basic understanding. In order to have basic
22 understanding, you need controlled situations where
23 you change one variable at a time. Commercial
24 cigarettes would not allow us to have controlled
25 conditions, and we would not know the basic variables

1 involved and therefore could not make conclusions.

2 Q Okay. So there was a standard policy not
3 to test commercial cigarettes?

4 A No. I disagree with the characterization.
5 MR. FOWLER: I object to the form of the
6 question.
7 BY MR. HOAG:

8 Q Were commercial cigarettes in Richmond,
9 Virginia, to your knowledge, ever tested to find out
10 their level of the NNK nitrosamine in sidestream
11 smoke?

12 A In sidestream smoke, not to my knowledge in
13 Richmond. We had previous knowledge from Neuchatel.

14 Q Now, you said in Neuchatel, Switzerland,
15 there were tests done of commercial cigarettes
16 related to the sidestream smoke; is that correct?

17 A Yes.

18 Q And was it aged sidestream smoke?

19 A Some of the work was aged, yes.

20 Q When you say, some of the work was aged,
21 what percentage of the work was aged?

22 A I'd say relative to the total amount of
23 work done in Neuchatel at that time, a large amount
24 of their focus was on aged sidestream smoke, whereas
25 a large amount of Richmond's focus at the time was on

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1 mainstream smoke.

2 Q Was it the primary responsibility of the
3 scientists in Switzerland to measure the aged
4 sidestream smoke --

5 MR. FOWLER: Object to the form of the
6 question.

7 BY MR. HOAG:

8 Q -- as compared to the primary
9 responsibility of the people in Richmond?

10 MR. FOWLER: Same objection.

11 THE DEPONENT: To the degree --

12 BY MR. HOAG:

13 Q Ma'am?

14 A -- that they had a room before we did and
15 they had longer term experience; they had been doing
16 it for a longer period of time.

17 Q And what commercial cigarettes were tested?

18 A There were a variety of cigarettes from the
19 European market. There were also data reports and
20 actually pages that indicated that cigarettes like
21 Capri and Virginia Slims were tested in Neuchatel.

22 Q Where Capri and Virginia Slims actually
23 tested in Switzerland?

24 A That's my understanding, based on the
25 reports or actually the actual data sheets that I

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1 have seen.

2 Q You said, like Capri and like Virginia
3 Slims. Were Virginia Slims and Capri actually
4 tested?

5 A They were listed as, I think, Capri Lights
6 and Virginia Slims, as I recall.

7 Q They were listed as Capri-like, is that
8 what you said?

9 A There was another, there were two Capri
10 cigarettes and there was a Virginia Slims in the
11 specific page that I have, that I can recall.

12 Q And what documents are you referring to
13 now?

14 A It's a data sheet.

15 Q It's a data sheet from when?
16 A From the documents in Neuchatel.
17 Q What documents are you talking about at
18 Neuchatel?
19 A Their previous history in these studies.
20 Q When did you look at those documents?
21 A Within the last couple of months.
22 Q Did you look at those documents before or
23 after Dr. Morgan's deposition was taken?
24 MR. FOWLER: Object to the form of the
25 question. Which deposition are you referring to?

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1 BY MR. HOAG:
2 Q Did you look at those documents before or
3 after any of the depositions of Dr. Morgan were
4 taken?
5 A I have looked at some of the documents, if
6 you're talking about the total representation of the
7 documents representing the sidestream chamber work in
8 Neuchatel. I looked at some of those back in the
9 '80s, and I have looked at some of those within the
10 last few months.
11 Q And did you look at those in preparation
12 for your testimony today?
13 A Not specifically.
14 Q When you say, not specifically, what do you
15 mean?
16 A What I mean is that obviously I have been
17 involved in, over the last two months, since
18 Dr. Morgan's allegations, in understanding the
19 documents and the situation at hand.
20 Q Okay. So since what you referred to as
21 Dr. Morgan's allegations, you have been doing
22 additional research at Switzerland?
23 A Yes.
24 Q And what additional research have you been
25 doing?

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1 A We tested in the chamber in Switzerland two
2 controlled cigarettes similar to the ones used
3 previously in Neuchatel, Marlboro -- Marlboro 100s
4 and Virginia Slims, which is also a 100 cigarette.
5 Q How long ago did you do this?
6 A Within the last couple of months.
7 Q And prior to then had you ever done any
8 tests like that?
9 MR. FOWLER: Object to the form of the
10 question.
11 THE DEPONENT: What do you mean, tests like
12 that?
13 BY MR. HOAG:
14 Q Had you ever done a test on commercial
15 cigarettes similar to the test you did a couple of
16 months ago or recently after you became aware of what
17 you referred to as Dr. Morgan's allegations?
18 MR. FOWLER: I'm going to object to the
19 form of the question; similar to is too vague.
20 THE DEPONENT: Like I said before, there
21 was data available on Virginia Slims and Capri from
22 Neuchatel in the '80s.
23 BY MR. HOAG:
24 Q What was the data available on Virginia
25 Slims in the '80s?

1 A Excuse me?
2 Q What was the data that was available, for
3 example, on Virginia Slims in the '80s?
4 A Right, it's aged sidestream smoke data.
5 Q What did the data reveal?
6 MR. FOWLER: What did the data reveal?
7 MR. HOAG: Yes.
8 MR. FOWLER: Okay.
9 BY MR. HOAG:
10 Q Go ahead. You can answer.
11 A Well, there were numbers on a page and
12 basically NNK numbers --
13 Q Uh-huh.
14 A -- that were based on my understanding of
15 the common values found at the time, within the range
16 of the common values found for controlled cigarettes.
17 Q What were those common values that you have
18 an understanding of?
19 A The analysis of nitrosamines would be -- I
20 would have to go back and look at the conditions
21 specified. The analysis would be dependent on how
22 many cigarettes, the way it's expressed, the amount
23 of time it was aged, and so there are a number of
24 different ranges that I could sit here and spout off,
25 but the bottom line here is that the evidence

1 indicated at the time that certainly there was no
2 indication of a 10-fold or 40-fold increase.
3 Q Did the evidence indicate that aged
4 sidestream smoke had a higher NNK level than
5 sidestream smoke that was not aged?
6 A I don't believe that was looked at in that
7 particular study. I would have to go back and look
8 at the sheet.
9 Q So you don't believe the study actually
10 looked at any differences between aged sidestream
11 smoke and sidestream smoke that was not aged; is that
12 correct?
13 MR. FOWLER: Object to the form of the
14 question.
15 THE DEPONENT: Which study?
16 BY MR. HOAG:
17 Q The ones that you're talking about, that
18 you have since reviewed, that occurred in Switzerland
19 in the '80s.
20 A I'm sorry, I was thinking about one sheet
21 that had Virginia Slims on it. There are other
22 reports available from studies in the sidestream
23 chamber in the '80s that do look at aged sidestream
24 smoke versus fresh sidestream smoke, yes.
25 Q And what do they reveal about the readings

1 of the NNK nitrosamine or levels of the NNK
2 nitrosamine in the fresh versus aged sidestream
3 smoke?
4 A That it will increase over time to a point
5 of about five and a half hours.
6 Q And what's the increase? It starts at one
7 and ends at what level?
8 A It would depend, on, again, the way you're
9 expressing it, the number of cigarettes, the
10 cigarette that you're starting with. There's a wide

11 range of conditions, and therefore, that's why a
12 control would always have to be used in relating
13 data.
14 Q Okay. So in the 1980s, Philip Morris knew
15 that commercial cigarettes' sidestream smoke, when
16 aged, would show an increase in NNK levels over time;
17 is that correct?

18 MR. FOWLER: Object to the form of the
19 question.

20 THE DEPONENT: No.

21 BY MR. HOAG:

22 Q So Philip Morris did not know that in the
23 '80s, from research done in Switzerland; is that
24 correct?

25 MR. FOWLER: Object to the form of the

1 question.

2 THE DEPONENT: Not in commercial
3 cigarettes.

4 BY MR. HOAG:

5 Q I thought you just said that these things
6 that you reviewed were in commercial cigarettes?

7 A No, that's not what I said. I said the one
8 sheet of paper, I said, was referring to Virginia
9 Slims. If you look at the total amount of work that
10 was done in the chamber in Neuchatel with model
11 cigarettes, you did see the increase in NNK. I am
12 not sure that that was actually the protocol when
13 Virginia Slims was tested. It may have been one
14 single data point.

15 Q Well, what was the protocol when the
16 Virginia Slims cigarette was tested in the '80s in
17 Switzerland?

18 A I'm not sure at this point. I don't have
19 that in front of me. I don't know.

20 Q Where is that document?

21 A I don't know.

22 Q Do you have it in your files anywhere?

23 A Yes.

24 Q What other documents related to the
25 Virginia Slims cigarette or any other actual

1 commercial cigarette do you have in your files?

2 MR. FOWLER: Object to the form of the
3 question. It's very broad.

4 THE DEPONENT: Whoa.

5 BY MR. HOAG:

6 Q I'm specifically referring to the NNK level
7 in sidestream smoke.

8 A There are a number of documents relating to
9 Virginia Slims specifically.

10 Q Or any other commercial cigarette?

11 A We have literature reports, and I'm not
12 sure those are related to aged sidestream smoke. We
13 have this one data sheet from Neuchatel that did
14 indicate Virginia Slims was tested in the '80s, and
15 that's all that I can recall specifically on Virginia
16 Slims. We now have, obviously, the study we've done
17 in the last couple of months.

18 Q Now, was the study that you did in the last
19 couple of months the same study that was done in the
20 '80s in Switzerland or is it different?

21 A The design of the study was, it was

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22 specifically designed and set-up to be as close as
23 possible to the setup and the protocol in the '80s.
24 However, we did test, in this study, a Marlboro as a
25 controlled, commercial cigarette.

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1 Q When you say, in this study, which one do
2 you mean?
3 A The recent one, in the last few months.
4 Q Did you supervise that test?
5 A No. I asked -- I requested it, but I, in
6 no way, supervised it.
7 Q You requested that the test be done?
8 A Correct.
9 Q And you requested people that you supervise
10 to do the test?
11 A No, those individuals I do not supervise.
12 Q The people that you asked to do the test,
13 who are they?
14 A They work -- they're the Philip Morris
15 Europe laboratory, and they are part of Philip Morris
16 International.
17 Q What are their names?
18 A I'm sorry, I didn't hear the whole
19 question.
20 Q What are their names?
21 A The head of the facility is Dr. Allen
22 Kassman. The director of research is Dr. Suber and
23 the individual that has done many of the studies is
24 Dr. Piade, P-I-A-D-E.
25 Q Okay. Those are all Philip Morris

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1 employees, correct?
2 A Correct.
3 Q And when you requested that, did you
4 request that in writing?
5 A No.
6 Q How did you do the request?
7 A Over the phone and via other people.
8 Q What other people did you do it through?
9 A Through Robin Kinser and Dr. Ferguson.
10 Q And how did you do it through Robin Kinser
11 and Dr. Ferguson?
12 A Basically I told them what question we
13 wanted to ask or what we wanted to find out, and they
14 interacted, got the cigarettes over there and
15 interacted with the individuals to ensure that the
16 study was done.
17 Q And what question did you want to ask?
18 A I wanted to address Dr. Morgan's
19 allegation.
20 Q What was your specific question?
21 A Did Virginia Slims cigarettes have higher
22 than normal values of NNK in this particular model
23 setup.
24 Q And what particular model setup is that?
25 A The room, sidestream chamber. Are you

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1 there?
2 Q Yes. And when you say, higher than normal
3 values, what do you mean?
4 A The allegation was that Virginia Slims had
5 higher values than any cigarette that had been tested
6 before, and that is what I mean.

7 Q Reference cigarette, correct? Reference
8 cigarette, not commercial cigarette, correct?
9 MR. FOWLER: I object to the form of the
10 question.
11 THE DEPONENT: I don't understand your
12 question.
13 BY MR. HOAG:
14 Q When you say, the allegation, Dr. Morgan
15 was not allowed to test anything other than reference
16 cigarettes; isn't that correct?
17 MR. FOWLER: Object to the form of the
18 question.
19 THE DEPONENT: I don't agree with that
20 characterization.
21 BY MR. HOAG:
22 Q Dr. Morgan was allowed to test production
23 cigarettes for the NNK nitrosamine level; is that
24 correct?
25 MR. FOWLER: Object to the form of the

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1 question.
2 BY MR. HOAG:
3 Q Is that correct?
4 A If Dr. Morgan -- well, in the kind of work
5 that we were doing, it would be inappropriate to use
6 commercial cigarettes, as I indicated before.
7 Q Okay. So Dr. Morgan was not allowed to use
8 commercial cigarettes to do the test for the NNK
9 nitrosamine, nitrosamine on aged sidestream smoke,
10 correct?
11 MR. FOWLER: Object to the form of the
12 question.
13 THE DEPONENT: I disagree with the
14 characterization. Dr. Morgan obviously has indicated
15 that he freely did many things independently.
16 BY MR. HOAG:
17 Q So if Dr. Morgan wanted to, he could have
18 tested any commercial cigarette he wanted to for the
19 NNK nitrosamine level in aged sidestream smoke; is
20 that correct?
21 MR. FOWLER: Object to the form of the
22 question.
23 BY MR. HOAG:
24 Q Is that correct?
25 A I don't understand why anybody would want

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1 to.
2 Q Test commercial cigarettes for the NNK
3 level in aged sidestream smoke? You don't know why
4 anybody would want to do that?
5 A In the context of the work we were doing,
6 that's correct.
7 Q So in the context of the work to find out
8 the components of aged sidestream smoke, you can't
9 understand why anyone would want to know what the NNK
10 level is in commercial cigarettes; is that correct?
11 MR. FOWLER: Object to the form of the
12 question.
13 BY MR. HOAG:
14 Q Is that correct?
15 A This was not a routine commercial cigarette
16 testing laboratory. This was a laboratory and a
17 group of individuals that were very focused on basic

18 understanding of the formation of compounds in
19 certain model situations, and in that understanding,
20 then being able to potentially effect a change in the
21 level. Therefore and under those conditions, any
22 scientist would not want a situation where you would
23 have variable filler materials, variable over periods
24 of years. You cannot control the variables. You
25 would not have appropriate controlled cigarettes.

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1 You would be looking at more than one variable. You
2 would not then get any information out of those
3 studies. Therefore, in terms of good science, it
4 would be inappropriate to test commercial cigarettes
5 based on the objectives of the work that was done by
6 this group at this time.

7 Q Okay. So the group that Dr. Morgan was a
8 part of, as a general policy, they were not supposed
9 to be testing commercial cigarettes; is that correct?

10 MR. FOWLER: I'm going to object to the
11 form of the question. It's been asked and answered
12 several times.

13 BY MR. HOAG:

14 Q Is that correct?

15 A No.

16 Q It just would have been inappropriate and
17 unscientific to study commercial cigarettes; is that
18 correct?

19 A In the context of this work.

20 MR. FOWLER: I object to the form of the
21 question.

22 BY MR. HOAG:

23 Q Pardon me?

24 A In the context of this work. This was not
25 a routine laboratory for competitive testing or

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1 commercial cigarette testing.

2 Q Competitive testing? Would it be
3 competitive testing to find out how many carcinogenic
4 compounds and the level of carcinogenic compounds in
5 Philip Morris' own cigarettes -- would that be
6 competitive?

7 MR. FOWLER: Object to the form of the
8 question.

9 BY MR. HOAG:

10 Q You can answer.

11 A No.

12 Q Ma'am?

13 A No.

14 Q Did Philip Morris ever test its own
15 cigarettes to find out how many carcinogenic
16 compounds are in its own cigarettes?

17 MR. FOWLER: Object to the form of the
18 question.

19 BY MR. HOAG:

20 Q You can answer, ma'am.

21 A We have done a lot of work on cigarettes
22 over the years, and certainly a variety of cigarettes
23 have been tested. Those reports have appeared in the
24 literature in some cases. Those reports have -- in
25 some cases, specific analyses were done on commercial

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1 cigarettes, depends on the end point. But I'm not
2 aware of one study that looked at one cigarette,

3 commercial cigarette and looked at everything in the
4 context of that. Certainly we've done many studies
5 looking at cigarettes and isolating and identifying
6 compounds in smoke.

7 Q Well, how many additives or flavorants are
8 in the Virginia Slims cigarette?

9 A I don't know.

10 Q Does that have any significance to you as a
11 scientist?

12 MR. FOWLER: Object to the form of the
13 question.

14 BY MR. HOAG:

15 Q You can answer.

16 A In the context of what?

17 Q In the context of knowing the interaction
18 of numerous chemicals that are in the additives and
19 how they interact with the tobacco smoke.

20 MR. FOWLER: Object to the form of the
21 question.

22 THE DEPONENT: In the context of what end
23 point? I'm not -- I don't understand your question.

24 BY MR. HOAG:

25 Q The end point being -- at least as I

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1 understand the term end point -- the end point being
2 when somebody involuntarily inhales the smoke, which
3 includes the entire commercial cigarette, not just
4 the portions that are tested in a reference
5 cigarette.

6 MR. FOWLER: Object to the form of the
7 question.

8 THE DEPONENT: That information has been
9 thoroughly gathered and reviewed on the individual
10 ingredients that are used in cigarettes. That list
11 has been put out publicly a couple of years ago, and
12 a group of toxicologists have looked at the data
13 associated with each ingredient of significance in
14 this case and have basically said that as intended
15 and as used that these should not present an issue.

16 BY MR. HOAG:

17 Q So did the toxicologists track how those
18 numerous additives interact in a given commercial
19 cigarette? Did they do that?

20 A Scientifically that would be impossible to
21 completely characterize all of the processes going on
22 in a combustion situation. However, those
23 toxicologists did review chemical and biological data
24 that basically represented a characterization of
25 those ingredients in the context and outside of the

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1 context of cigarette smoke.

2 Q The toxicologists you're talking about were
3 funded by the tobacco companies; is that correct?

4 MR. FOWLER: Object to the form of the
5 question.

6 BY MR. HOAG:

7 Q Is that correct?

8 A I'm specifically not aware of how they were
9 funded. I know they were obtained by Covington and
10 Burling, I believe.

11 Q And who is that?

12 A A law firm in Washington.

13 Q And how do you know they were obtained by

14 the law firm in Washington?
15 A Because that is the group that puts
16 together the ingredients list for the industry for
17 health and human services according to the
18 regulations every year.
19 Q They put together a list of the cumulative
20 number of additives in cigarettes; is that correct?
21 MR. FOWLER: Object to the form of the
22 question.
23 THE DEPONENT: I don't understand what you
24 mean by cumulative.
25

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1 BY MR. HOAG:
2 Q Well, they don't put together a list of
3 what specific additives are in each specific
4 cigarette, correct?
5 A Correct.
6 Q So, for example, a Virginia Slims brand
7 might have 100 additives that are cumulatively not
8 the same additives that a Marlboro has.
9 MR. FOWLER: Object to the form of the
10 question.
11 THE DEPONENT: Potentially.
12 BY MR. HOAG:
13 Q Well, you know that's correct.
14 A No, I don't know that's true.
15 Q You don't know what all the additives are
16 that go in a cigarette?
17 A I don't. I know what the total list is.
18 Q The total list for all cigarettes,
19 cumulatively, correct?
20 A Yes.
21 Q Which is not the same as the specific
22 additives in a specific cigarette brand, correct?
23 A That's correct.
24 Q And how those different additives interact
25 with each other in any particular cigarette is

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1 nothing you have looked at; is that correct?
2 MR. FOWLER: Object to the form of the
3 question.
4 THE DEPONENT: I would think that's
5 incorrect.
6 BY MR. HOAG:
7 Q Okay. So you have looked at how all the
8 additives, for example, in a Virginia Slims interact
9 with one another; is that correct?
10 A No, I don't think that's possible, as I
11 indicated, scientifically to look at in that complex
12 environment; how all of those materials interact
13 together.
14 Q Okay. So when you test, for example,
15 reference cigarettes, reference cigarettes don't have
16 any of the additives or flavorants in them, correct?
17 A Some do and some don't.
18 Q Some reference cigarettes have the
19 additives and flavorants in them?
20 A If you design an experiment to look at the
21 flavor, you would have a reference cigarette without
22 and a reference cigarette with, and that is indeed
23 part of the data that was looked at by the
24 toxicologists.

25 Q Did the toxicologists look at the NNK level
1 of sidestream, aged sidestream smoke?
2 MR. FOWLER: Would you say that again,
3 John, I don't catch that.
4 BY MR. HOAG:
5 Q Did the toxicologists look at the NNK level
6 of aged sidestream smoke?
7 A I don't know.
8 Q So you don't know if that's something that
9 they looked at; is that correct?
10 A No, I don't.
11 Q Is that correct?
12 A That's correct. I don't know.
13 Q Okay. Now, you know that Philip Morris did
14 do studies in the '80s related to the NNK level of
15 aged sidestream smoke, correct?
16 A Yes.
17 Q And you know that all of the studies that
18 were done in Richmond were done or at least were
19 supposed to have been done on reference rather than
20 commercial cigarettes, correct?
21 A I disagree with that characterization.
22 Q Well, when Dr. Morgan actually did studies
23 or found out that he had looked at a Virginia Slims
24 cigarette, he was admonished and told never to study
25 that commercial cigarette again for purposes of

1 measuring the sidestream smoke and looking at the NNK
2 level; correct?
3 MR. FOWLER: I object to the form of the
4 question.
5 BY MR. HOAG:
6 Q Is that correct?
7 A Not to my knowledge. No, it's not correct.
8 Q Well, Dr. Morgan did actually measure the
9 NNK level in Virginia Slims cigarettes in aged
10 sidestream smoke, didn't he?
11 MR. FOWLER: Object to the form of the
12 question.
13 THE DEPONENT: Not to my knowledge, no.
14 BY MR. HOAG:
15 Q And you made the decision that all the
16 documentation of that study that Dr. Morgan had done
17 should be destroyed, didn't you?
18 MR. FOWLER: I object to the form of the
19 question.
20 BY MR. HOAG:
21 Q You can answer.
22 A I have no recollection of the study that
23 you're referencing on Virginia Slims aged sidestream
24 smoke or the documents and their destruction. I have
25 no recollection of that whatsoever.

1 Q You have no recollection of the destruction
2 of the documents; is that what you're saying?
3 A I have no recollection that that ever
4 occurred.
5 Q You did instruct someone under your
6 supervision to make sure that any documentation of
7 the study Dr. Morgan did was destroyed, didn't you?
8 MR. FOWLER: I object to the form of the
9 question. It also misstates Dr. Morgan's testimony.

10 BY MR. HOAG:
11 Q Didn't you?
12 A I have no recollection of anything related
13 to Virginia Slims aged sidestream smoke, NNK levels
14 or any documentation associated with that and that
15 destruction. I have no recollection of that.
16 Q Are you saying you have no recollection but
17 it could have happened, you just might not remember
18 it?
19 MR. FOWLER: Object to the form of the
20 question.
21 BY MR. HOAG:
22 Q Is that what you're saying?
23 A I have -- I mean, I have no knowledge,
24 experience, data, and other people that I have spoken
25 to also do not have that. I have no evidence that

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1 that ever occurred.
2 Q Did anyone provide you with information
3 that Dr. Morgan had done a study of the NNK level of
4 aged sidestream smoke on a commercial cigarette?
5 A Would you please repeat that?
6 MR. FOWLER: Yes, would you please repeat
7 that?
8 BY MR. HOAG:
9 Q Yes. I'll rephrase it. Do you know Robin
10 Kinser?
11 A Yes.
12 Q Who is she?
13 A Currently she's a scientist, and she
14 manages the analytical research division.
15 Q In 1989 did you supervise Robin Kinser?
16 A Yes.
17 Q Okay. And who supervised Dr. Morgan in
18 1989?
19 A I believe it was Dr. Warfield.
20 Q And who supervised Dr. Warfield?
21 A Robin Kinser.
22 Q Okay. In 1989 did Robin Kinser inform you
23 that Dr. Morgan had obtained some information
24 indicating that a commercial cigarette had a higher
25 NNK nitrosamine level in aged sidestream smoke than

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1 the reference cigarettes had?
2 A I have to repeat, I have no knowledge,
3 recollection -- as a matter of fact, all I have is
4 evidence that that did not occur.
5 Q Okay. When you say you don't have any
6 recollection that you were told this in 1989, are you
7 sure you weren't told this or you just don't remember
8 whether you were told this?
9 MR. FOWLER: Object to the form of the
10 question.
11 BY MR. HOAG:
12 Q You can answer.
13 A I have no, even, inkling that this ever
14 occurred, not even a touch.
15 Q Now, hypothetically, if someone had come to
16 you in 1989 and told you that the Virginia Slims
17 cigarette had been tested and that the NNK
18 nitrosamine level in sidestream smoke for the
19 Virginia Slims was ten times higher than for any
20 other previously tested reference cigarette, what, if

21 anything, would you have done with that information?
22 MR. FOWLER: Object to the form of the
23 question; incomplete hypothetical.
24 BY MR. HOAG:
25 Q You can answer.

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1 A I would do what I just did in the last two
2 months, I would do a complete experiment with a
3 number of data points in a highly controlled
4 situation.
5 Q You would do a complete experiment?
6 A Absolutely.
7 Q You wouldn't tell anyone not to do any
8 experiments, correct?
9 A No, I would not tell anyone not to do any
10 experiments.
11 Q You wouldn't discourage people from
12 replicating that type of result; is that correct?
13 A That's correct, I would not discourage
14 anyone from finding out. That's appropriate to
15 follow up, and that's what we have done in the last
16 two months.
17 Q So the last two months being, let's see,
18 this is May, sometime in April or sometime in March?
19 A I think Dr. Morgan's first deposition was
20 in late February. Within a week after that
21 deposition we had begun to plan and proceed with
22 those studies.
23 Q The first deposition that Dr. Morgan did in
24 February, were there any news accounts of that?
25 A Yes.

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1 Q Did you read about it in the newspaper?
2 A Yes.
3 Q It was pretty much publicly known that
4 Dr. Morgan had done this research back in '89; is
5 that correct?
6 MR. FOWLER: Object to the form of the
7 question.
8 THE DEPONENT: No.
9 BY MR. HOAG:
10 Q Well, Dr. Morgan's statements about the
11 research were in the newspaper prior to the time you
12 decided to do any kind of a follow-up study; is that
13 correct?
14 MR. FOWLER: Object to the form of the
15 question.
16 BY MR. HOAG:
17 Q Is that correct?
18 A I'm trying to think back over -- yeah, I
19 believe that is correct. I think I got the
20 deposition probably when the media got the
21 deposition, and it was within a matter of days, as I
22 indicated.
23 Q Okay. And prior to the time Dr. Morgan's
24 deposition was taken and the media report was
25 published, did you know that Dr. Morgan had done a

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1 study measuring the NNK nitrosamine level of Virginia
2 Slims cigarettes?
3 MR. FOWLER: I'm going to object to the
4 form of the question; assumes facts not in evidence.
5 If you want to refer to his allegations, I think that

6 would be a more appropriate way to proceed, rather
7 than to assume that the testing was actually done.
8 BY MR. HOAG:
9 Q You can answer the question, ma'am.
10 A I'm not sure I understand the question.
11 Would you repeat it, please?
12 MR. HOAG: Can the court reporter read back
13 the question, please?
14 (Last question read back)
15 MR. FOWLER: I'm going to repeat my
16 objection.
17 BY MR. HOAG:
18 Q You can answer, ma'am.
19 A Obviously not.
20 Q Is that because if you would have known of
21 such a study, you would have immediately attempted to
22 replicate it; is that correct?
23 MR. FOWLER: Object to the form.
24 THE DEPONENT: I certainly would have done
25 that.

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1 BY MR. HOAG:
2 Q And you would have made sure that the
3 studies, the replication studies were provided to the
4 scientific community, correct?
5 MR. FOWLER: Object to the form of the
6 question.
7 BY MR. HOAG:
8 Q Is that correct?
9 A I would make sure that if we had knowledge
10 of significance to the scientific community, that it
11 would be provided.
12 Q And Philip Morris never withholds any
13 scientific evidence they have from the rest of the
14 scientific community; is that correct?
15 MR. FOWLER: I object to the form of the
16 question.
17 THE DEPONENT: Philip Morris does research
18 based on products, and a lot of that research is
19 proprietary. And it would certainly be inappropriate
20 for any company to divulge research that could or
21 would provide any kind of proprietary advantage to
22 that company.
23 BY MR. HOAG:
24 Q Is research on the health affects of
25 tobacco smoke proprietary information?

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1 MR. FOWLER: Object to the form.
2 BY MR. HOAG:
3 Q You can answer.
4 A Not if it's the general addition of
5 knowledge that's important to the consumer, but if it
6 relates to product technologies or an understanding
7 of the product, it would be.
8 Q Did you write or sign any of the work
9 evaluations or performance evaluations for
10 Dr. Morgan?
11 A Yes.
12 Q Which ones?
13 A Oh, probably beginning from the time that I
14 was a section leader all the way -- of the
15 biochemical research division -- all the way through
16 to being director of research, I would have been

17 involved in his performance reviews at one level or
18 another.
19 Q Okay.
20 A But I never directly, to my recollection I
21 never directly wrote or prepared his performance
22 review.
23 Q Did he receive less than a satisfactory
24 evaluation?
25 A He did receive less than satisfactory on

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1 some elements of his performance appraisal, but not
2 overall.
3 Q So he never received less than an overall
4 satisfactory performance evaluation; is that correct?
5 A I'll repeat, he received less than
6 satisfactory on certain elements of certain
7 appraisals, but never overall.
8 Q So his overall performance evaluations were
9 always at least satisfactory; is that correct?
10 MR. FOWLER: Asked and answered.
11 BY MR. HOAG:
12 Q Is that correct?
13 A We called it, meets requirements.
14 Q And you signed those performance
15 evaluations, correct?
16 A That's correct.
17 Q And when you sign them, does that mean you
18 agree with them?
19 A It means that I've reviewed them and that
20 I've understood that the evidence indicated is
21 consistent with the appraisal outcome, relative to
22 other individuals.
23 Q Did you consider Dr. Morgan to be a
24 competent scientist?
25 A Yes.

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1 Q Now, you said you've spoken to Robin Kinser
2 about Dr. Morgan; is that correct?
3 MR. FOWLER: Object to the form.
4 THE DEPONENT: I don't think I ever spoke
5 to Robin specifically about Dr. Morgan, and I have
6 not spoken to Robin in quite some time. When his
7 first deposition was made public, I did speak to
8 Robin at that time.
9 BY MR. HOAG:
10 Q And what did you say to Robin at that time?
11 A I asked her whether she had any
12 recollection of this ever occurring; the allegation
13 ever occurring.
14 Q And what did she say?
15 A No.
16 Q Okay. What is Robin's current position?
17 A As I indicated, she's manager of analytical
18 research.
19 Q Did you speak to anyone else concerning
20 Dr. Morgan?
21 A As an individual or the work that he
22 alleged occurred?
23 Q Concerning the contents of his deposition.
24 A Again, I had Dr. Ferguson work on repeating
25 that experiment and gathering information on the work

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1 that was done both in Richmond and in Neuchatel and

2 interacting with Neuchatel on that experiment.
3 Q And has that experiment been completed now?
4 A Yes.
5 Q And how long ago was it completed?
6 A I would say it was the middle of April that
7 the final report came.
8 Q And how long did it take to complete?
9 A It was begun late February, and it took
10 March, most of March and sometimes two shifts of
11 individuals working in the room to get the data.
12 Q And why did it take two shifts?
13 A Because there were -- the room had to be,
14 again, recalibrated and set-up like it was in that
15 period of time, and you had multiple samples that had
16 to be tested, and multiple analyses that had to be
17 done.
18 Q When you say, multiple samples, what do you
19 mean?
20 A What I mean is, you don't just do one
21 smoking of a cigarette, you do numerous smokings in
22 order to look at the variability.
23 Q Okay. And how many were done?
24 A I would say it varied, but I would say at
25 least five or six were done on most of the models

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1 tested.
2 Q When you say, most of the models tested,
3 what models were tested?
4 A Two controlled cigarettes that were the
5 standard controls used in the room in the '80s,
6 Marlboro 100s -- Marlboro Light 100s and Virginia
7 Slims 100s.
8 Q You say two controlled cigarettes that were
9 used in the '80s?
10 A That's correct.
11 Q How were these controlled cigarettes
12 purchased, at a grocery store?
13 A No, they were reference cigarettes. This
14 is our way of determining whether or not the room is
15 operating and there is any variability. From time to
16 time, if you're continually testing different samples
17 and you don't have controlled samples that you test,
18 if you're testing over a period of time, you have no
19 way of knowing whether or not your conditions have
20 changed.
21 Q Other than the two different reference
22 cigarettes that were tested, what other cigarettes
23 were tested?
24 A I just told you, Marlboro Light 100s and
25 Virginia Slims 100s.

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1 Q Were those commercial cigarettes?
2 A Yes, purchased in Richmond in late
3 February.
4 Q Okay. Now, in the reference cigarettes,
5 what were the results?
6 MR. FOWLER: I'm going to object to the
7 form of the question. That's vague.
8 BY MR. HOAG:
9 Q You can answer.
10 A Basically the focus was on -- a number of
11 points over time were taken, that is, a number of
12 samples from the room were taken over time up to say,

13 five and a half, six hours time period. So
14 therefore, you know, 30 cigarettes, approximately,
15 were smoked in the room and allowed to age over a
16 period of hours. And then samples were taken during
17 that period of time and analyzed for NNK and other
18 parameters. Basically NNK did increase over time in
19 all samples, and my recollection of the data was that
20 there was no statistical difference overall in any of
21 the samples, and there was a lot of variability also.

22 Q And is there written documentation of these
23 studies?

24 A Yes.

25 Q Were any of these documents destroyed or

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1 thrown away?

2 MR. FOWLER: Object to the form of the
3 question.

4 THE DEPONENT: No. We just performed them.
5 BY MR. HOAG:

6 Q So all of the results of every single one
7 of these studies is still kept, correct?

8 MR. FOWLER: Object to the form of the
9 question; all what studies?

10 BY MR. HOAG:

11 Q Talking about the studies that you're
12 talking about right now that you did after the
13 deposition of Dr. Morgan.

14 A Yes, all the documentation is available.

15 Q Okay. Where is that kept?

16 A The final report we have a copy of in
17 Richmond. All of the other documentation around the
18 study would be kept in Neuchatel, where the study was
19 done.

20 Q Okay. So you said there's a lot of
21 variability. What's the range of variability?

22 A I point that out because interestingly for
23 NNK there tends to be much more variability than
24 there is for any other nitrosamine, and that has,
25 over the years, given us technical concern over the

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1 artifact formation being prevalent in this kind of
2 analysis. In other words, the number that you would
3 get would not be representative of what is actually
4 occurring in that room, and certainly a model room is
5 not representative of any other environment.

6 Q What was the range of variability?

7 A Basically for NNK the range of variability
8 would be in terms of 1,000 or more nanograms.

9 Q Right. What was the minimum and what was
10 the maximum?

11 A I could not give it to you off the top of
12 my head.

13 Q The maximum more than 10,000 nanograms?

14 A I don't believe I recall a figure in any of
15 those samples being more than that, no.

16 Q Do you recall it being such as that?

17 A No. I think the maximum was somewhere
18 around 8 or 9, as I recall.

19 Q Eight or nine thousand nanograms?

20 A Correct.

21 Q In one cigarette?

22 A No.

23 Q In what measurement?

24 A The maximum over time?
25 Q Yes.

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1 A I don't have that data in front of me, and
2 I don't want to misrepresent it.

3 Q So we would like to see all of that data,
4 we're asking for all of the data that you've
5 collected, after the deposition. Are you relying on
6 that data for any part of your testimony?

7 MR. FOWLER: I'm going to object to the
8 form of the question.
9 BY MR. HOAG:

10 Q Are you relying on that data for any
11 portion of your testimony or any opinions that you
12 have?

13 A Certainly, if that becomes a topic, I
14 would.

15 MR. HOAG: We would like to have copies of
16 all of that data that she's relying on as the basis
17 for any opinion concerning the NNK nitrosamine level
18 of aged sidestream smoke, and also we will, once we
19 receive that data, we will need to complete this
20 deposition.

21 MR. FOWLER: This deposition will be
22 completed when we're done today, and I'll pass along
23 your informal request to trial counsel.

24 MR. HOAG: I understand your position
25 concerning the deposition, but I'm giving you our

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1 position on the deposition.

2 MR. FOWLER: Understood.

3 BY MR. HOAG:

4 Q Okay. So your recollection is somewhere
5 around 8,000 nanograms, 8- or 9,000 nanograms was the
6 highest reading for NNK?

7 A That's correct.

8 Q And you don't know whether that was for one
9 cigarette or not?

10 A I'm not sure if the graph represented what
11 was in the room or was divided by the number -- I
12 believe it was divided by the number of cigarettes.

13 Q Okay. So that 8- or 9,000 reading, was
14 that for a commercial cigarette?

15 A No -- I'm sorry, yes.

16 Q So the highest level reading was for
17 commercial cigarettes; is that correct?

18 A No, not necessarily. As I said, there was
19 no statistical difference between those samples. You
20 asked me what was the highest level of all.

21 Q Right.

22 A But that was not -- there was a lot of
23 variability. And there were also, within the same
24 cigarette, other samples that were significantly
25 lower or much lower.

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1 Q That 8- or 9,000 nanograms reading that you
2 recollect, that was in a commercial cigarette; is
3 that correct?

4 A Yes, I think that could be represented by
5 the commercial cigarette. It may also be represented
6 by one of the references, too.

7 Q So it might have been both?

8 A Yeah. Like I said, there was no indication

9 of a statistical difference, especially at the aged,
10 that is, five and a half hour time point.
11 Q And how did you decide how many times you
12 were going to do these tests?
13 A I did not make that determination, the
14 scientists did.
15 Q Who did?
16 A Pardon me?
17 Q Who did?
18 A The scientists.
19 Q How did they make that determination? What
20 was it based on?
21 A I think that it was based on a reasonable
22 number of replicates.
23 Q What were a reasonable number of
24 replicates?
25 A I think that's based on what the data is

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1 and the variability in the data and whether or not
2 you're going to, in any way, get a different
3 conclusion or there's something wrong with your
4 analysis; you have to make that determination.
5 Q How long did it take them to complete the
6 study from the time they started till the time they
7 completed it?
8 A Like I said, I believe they started at the
9 end of February. And I think most of the
10 experimental work was done or finished or completed
11 in March, and then it was a matter of working on the
12 data and the report.
13 Q So it took about a month?
14 A Yes.
15 Q And how many scientists worked on it?
16 A I believe there were a number of
17 technicians and one or two scientists, so I think
18 there were up to four or five people working on this.
19 Again, as I indicated, there were two shifts of
20 individuals for some periods of time.
21 Q When the results were achieved, did they
22 send the results directly to you?
23 A Not directly to me, they sent it to
24 Dr. Ferguson.
25 Q And he sent it to you?

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1 A He gave it to me or in some cases he would
2 tell me results over the phone.
3 Q Do you supervise Dr. Ferguson?
4 A Ultimately, but not directly.
5 Q You supervise whoever supervises
6 Dr. Ferguson; is that correct?
7 A Yes.
8 Q Who supervises Dr. Ferguson?
9 A Dr. Cox.
10 Q Is that who you supervise directly?
11 A That's correct.
12 Q Okay. And who does Dr. Ferguson supervise?
13 A Who does he supervise?
14 Q Yes.
15 A No one right now. He functions as a senior
16 technical chemist who basically assists in studies
17 like that or special studies.
18 Q Where is he based?
19 A In Richmond.

20 Q Okay. So what was Dr. Ferguson's role in
21 the completion of the study?
22 A His role was to interact with Neuchatel to
23 get the study done.
24 Q Who did he interact with at Neuchatel?
25 A Primarily Jean-Jacques Piade, Dr. Piade.

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1 Q What's Dr. Piade's position?
2 A He's, again, a senior technical chemist in
3 Neuchatel.
4 Q And who supervises him, Dr. Piade?
5 A Dr. Suber, S-U-B-E-R.
6 Q And who supervises Dr. Suber?
7 A Dr. Kassman.
8 Q Who does Dr. Kassman report to?
9 A He reports to the operations individual in
10 Lausanne, Switzerland, Klaus Schmidt.
11 Q Who supervises him?
12 A The president of Philip Morris Europe or
13 EU.
14 Q Who is that?
15 A At this time -- there was just an
16 organizational change, and the individual, I believe,
17 is Mr. Hendrys. I'm not sure if that's correct.
18 Q And who supervises Mr. Hendrys?
19 A At this period in time he would probably --
20 again, we have had some organizational changes.
21 Today he would probably report directly to Bill Webb.
22 Sorry, he would report directly to Mr. Gimbler, who
23 would be the head of Philip Morris International, and
24 he would report to Bill Webb.
25 Q Who is Bill Webb?

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1 A Who is Bill Webb?
2 Q Uh-huh.
3 A He's basically in charge of operations for
4 Philip Morris Companies, Incorporated, worldwide.
5 Q Who supervises him?
6 A Jeff Bible.
7 Q Jeffrey Bible?
8 A Right.
9 Q And what is Mr. Bible's position?
10 A He's chairman and CEO.
11 Q Have you had any communications with
12 Mr. Bible concerning Dr. Morgan's deposition and/or
13 this study?
14 A No.
15 Q Has anyone, to your knowledge, had any
16 communication with Mr. Bible concerning this study?
17 A Not to my knowledge.
18 Q Not to your knowledge?
19 A Not to my knowledge.
20 Q When you decided to do this study, did you
21 ask someone else if you could do it or did you just
22 make the request on your own?
23 A I did meet with some individuals and said
24 this is what I wanted to do.
25 Q What individuals did you meet with?

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1 A Chuck Wall and John Mulderig.
2 Q Who are they?
3 A Two lawyers in New York for Philip Morris.
4 Q So you met with two Philip Morris lawyers

5 before you actually implemented your request --
6 A Yes.
7 Q -- and your study, correct?
8 A Correct.
9 Q What did they tell you?
10 MR. FOWLER: I'm going to object to any
11 inquiry into what Dr. Ellis talked to company lawyers
12 about.
13 BY MR. HOAG:
14 Q Okay. What did they tell you?
15 MR. FOWLER: I'm going to instruct the
16 witness not to answer on the basis of privilege.
17 MR. HOAG: I'm going to certify the
18 question --
19 MR. FOWLER: Fine.
20 MR. HOAG: -- related to what the lawyers
21 told you about your request to do the research
22 concerning Dr. Morgan's deposition.
23 MR. FOWLER: Fine.
24 BY MR. HOAG:
25 Q And how long did you speak with these two

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1 attorneys?
2 MR. FOWLER: You may answer as to the
3 length, but not the substance.
4 THE DEPONENT: I would say very briefly;
5 ten minutes.
6 BY MR. HOAG:
7 Q And after you spoke with them, what did you
8 do?
9 A I went to another meeting.
10 Q With who?
11 A I don't recall. At the time I was in New
12 York for another purpose, though.
13 Q Well, how soon after you spoke with them
14 did you implement your decision to request a study?
15 A Either that day or the next day.
16 Q Did you do that with a phone call?
17 A I don't recall precisely how that happened
18 at the time.
19 Q You didn't do it in writing though,
20 correct?
21 A No, I did not do it in writing.
22 Q Okay. Why did you not put your request in
23 writing?
24 A I had no reason to.
25 Q When you request a research study, do you

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1 usually put it in writing or do you usually just do
2 it orally?
3 A When I request something to be done, I
4 usually do not put it in writing.
5 Q This was kind of a major undertaking,
6 correct?
7 MR. FOWLER: Object to the form of the
8 question.
9 BY MR. HOAG:
10 Q Was this a major undertaking, to do this
11 study?
12 A I would -- I mean, relative to other
13 projects it may not be major, but it certainly isn't
14 a day in the lab, obviously.
15 Q What was the budget for this?

16 A There was no specific budget for this.
17 Q How much did it cost to do it?
18 A I have not done that analysis.
19 Q Who would be responsible for that analysis?
20 A I don't know if it will ever be done.
21 Q Does it come out of your budget?
22 A No, not necessarily, although it may be
23 charged back. I'm not sure how that will work.
24 Q Well, who did you contact to get the ball
25 rolling, to get the study done?

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1 A Again, I spoke with Robin Kinser. I also
2 spoke, I believe, with Dr. Kassman, in other words,
3 to ask whether or not that was something that we
4 could do. In order to assess the feasibility of the
5 study, I actually spoke to Dr. Kassman.
6 Q All right. And did he tell you it was
7 something you could do?
8 A Yes.
9 Q And then what happened?
10 A We did it.
11 Q How did it get accomplished? Did they
12 contact people or did you --
13 A I'm sorry, who is they?
14 Q Kassman.
15 A Yes, the study was done in his organization
16 by individuals that report to him.
17 Q That report to Kassman?
18 A That's correct.
19 Q And is Kinser in his organization?
20 A No. Dr. Kassman is in charge of the
21 organization in Europe.
22 Q So after you told Dr. Kassman what you
23 wanted, did you do anything else related to this
24 study?
25 A You mean -- I'm not sure. The question is

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1 very vague. I'm not sure I understand.
2 Q Did you have to do anything else to get the
3 study accomplished, other than talk to Dr. Kassman?
4 A I got periodic updates about, you know, the
5 progress of the study, issues, the fact that they
6 would have to go on to double shifts, the fact that
7 they had to do some set-up and calibration of the
8 equipment, and basically other than that, no, I had
9 no other involvement, other than getting the status
10 report.
11 Q How frequently did you get status reports?
12 A I don't think it was regular. I think it
13 was when they had data, that they would call and let
14 us know what was going on.
15 Q So the status reports were not in written
16 form?
17 A That's correct. It was a phone call.
18 Q So everything was done orally up until the
19 final report was written; is that correct?
20 MR. FOWLER: Object to the form of the
21 question.
22 BY MR. HOAG:
23 Q Is that correct?
24 A No.
25 Q Well, what was put in writing? Was

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1 anything put in writing to you before you received
2 the final report?
3 A I did receive some tables of some --
4 actually graphs of some preliminary data.
5 Q When did you receive that?
6 A A few weeks before the final report. But
7 it was not all of the data, at the time; they were
8 continuing to do some other experiments.
9 Q Uh-huh. And did you inform Dr. Kassman
10 about the deposition of Dr. Morgan?
11 A Yes.
12 Q Were all the scientists who participated in
13 this project aware of the deposition of Dr. Morgan?
14 A I don't know.
15 MR. FOWLER: Hey, John, whenever you reach
16 a good point, we have been going for about an hour
17 and twenty minutes or so; if we could take a break
18 whenever you get to a point.
19 MR. HOAG: Okay, in a couple of minutes.
20 Actually, I guess now would be okay. If we're going
21 to take a break, how about five minutes, okay,
22 because I expect to be done in an hour.
23 MR. FOWLER: If that's okay with you,
24 Doctor?
25 THE DEPONENT: That's fine.

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1 (Recess taken)
2 MR. FOWLER: We're ready to go again, John.
3 BY MR. HOAG:
4 Q Okay. Dr. Ellis, you were talking about
5 the study that was done in Switzerland within the
6 last couple of months, and you said that the
7 sidestream smoke was aged over a period of five and a
8 half to six hours; is that correct?
9 A That's right.
10 Q Did the NNK level increase each hour or did
11 it stabilize at some point?
12 A There was -- if you would look at the graph
13 of that data for every cigarette, you would see an
14 increase over time. Whether or not there was a
15 significant increase every hour, I don't think the
16 data was analyzed that way.
17 Q Did it look at each hour, for example? Did
18 it do measurements after one hour?
19 A Samples were taken at various points in
20 time up to sometimes past five and a half, six hours,
21 and I'm not sure what the maximum was, but certainly
22 it included five and a half hours. And again,
23 basically the level of NNK did increase up to five
24 and a half hours, at which point it generally
25 flattened out.

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1 Q Was it higher after five hours than it was
2 after one hour, the level of NNK?
3 A Yes.
4 Q Okay. What kind of increments did they
5 measure it in? Was it every twenty minutes, every
6 hour or what?
7 A It was basically certainly not every twenty
8 minutes. It was every hour or maybe every hour and a
9 half; they took certain time points along that curve.
10 Q Now, are you familiar with environmental
11 tobacco smoke, what the components of environmental

12 tobacco smoke are?
13 A In some cases, yes.
14 Q What are the components of environmental
15 tobacco smoke?
16 A There are a number of different components,
17 and obviously that is very complex material and the
18 components of environmental tobacco smoke are
19 dependent on a number of different situations,
20 including situations relating to the materials in the
21 room and the environment of the room, the ventilation
22 of the room. There are a lot of variables associated
23 with environmental tobacco smoke.
24 MR. FOWLER: John, if I could just
25 interject at this point, just so the record is clear,

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1 we have not designated Dr. Ellis as an expert in
2 environmental tobacco smoke, but I don't object to
3 you asking her questions, to the extent that she's
4 able to answer those. I wanted to make that clear
5 for the record.
6 BY MR. HOAG:
7 Q Does environmental tobacco smoke include
8 aged sidestream smoke?
9 A Not necessarily to the same, in the same
10 sense of that model system, no.
11 Q Does it include aged sidestream smoke?
12 Does environmental tobacco smoke include aged
13 sidestream smoke?
14 A If you are saying that environmental
15 tobacco smoke includes sidestream smoke that has
16 aged, that's correct, but if you're saying that
17 environmental tobacco smoke includes aged sidestream
18 smoke that is characterized by the room, that is
19 incorrect.
20 Q So Philip Morris has known since the early
21 1980s that the nitrosamine level increases as the
22 sidestream smoke ages, correct?
23 MR. FOWLER: Object to the form of the
24 question.
25

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1 BY MR. HOAG:
2 Q Is that correct?
3 A The model situation, which is highly
4 artificial, number one, indicated that. In the model
5 you would see potentially an increase in NNK. The
6 other issue is artifact formation that might be
7 occurring upon collection of this material. It is
8 not in any way a given that the room and numbers
9 represented in previous studies are in any way
10 related to the real environment.
11 Q You're not a measurement expert, correct?
12 MR. FOWLER: Object to the form of the
13 question.
14 BY MR. HOAG:
15 Q Is that correct, you're not an expert in
16 measurements?
17 A I'm not an analytical chemist, if that's
18 what you're asking. I am a scientist.
19 Q You are a what?
20 A I am a scientist, and scientists do measure
21 things.
22 MR. FOWLER: John, I think the confusion

23 is, measurement of what.
24 MR. HOAG: I'll withdraw the question.
25

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1 BY MR. HOAG:
2 Q Does cigarette smoking cause lung cancer?
3 A Cigarette smoking has been and there is
4 evidence that cigarette smoking is a risk factor. It
5 is inappropriate to say based on technical evidence
6 available that it causes lung cancer, and it's
7 inappropriate to say that there isn't a possibility
8 that it might be -- it is inappropriate to say that
9 it wouldn't possibly cause lung cancer. That is the
10 definition of a risk factor.
11 Q So as a scientist, your opinion is that you
12 don't know whether cigarette smoking causes lung
13 cancer; is that correct?
14 MR. FOWLER: Object to the form of the
15 question.
16 BY MR. HOAG:
17 Q Is that right?
18 A As a scientist in reviewing all of the data
19 that is available, the data indicates that there is
20 an association between -- there is a statistical
21 association between smoking and lung cancer, but the
22 technical data that would be necessary in order to
23 prove cause and effect is not available.
24 Q Well, does cigarette smoke cause any
25 diseases?

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1 A I would have to say that there are
2 associations between smoking and other diseases, but
3 my answer would be the same.
4 Q Does environmental tobacco smoke cause any
5 diseases?
6 MR. FOWLER: Object to the form. You can
7 go ahead and answer.
8 THE DEPONENT: There are reports about
9 environmental tobacco smoke being a risk factor. But
10 again, other than that, I think in that case the data
11 is, in terms of risk factor, data is very weak.
12 BY MR. HOAG:
13 Q Okay. So what is your -- as a scientist,
14 do you believe cigarette smoking, environmental
15 tobacco smoke, causes any diseases?
16 MR. FOWLER: Object to the form of the
17 question.
18 THE DEPONENT: I don't believe there is
19 scientific evidence indicating that, that is correct.
20 BY MR. HOAG:
21 Q Now, if, in fact, aged -- the amount of
22 NNK, tobacco specific NNK increases in aged
23 sidestream smoke, would that change your opinion as
24 to whether or not there is evidence to indicate that
25 environmental tobacco smoke causes disease?

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1 MR. FOWLER: I'm going to object to the
2 form of the question; misstating prior testimony.
3 BY MR. HOAG:
4 Q You can answer the question.
5 A I'm going to have to either have that
6 repeated for me --
7 MR. HOAG: Could you read it back, please?

8 (Question read back)
9 MR. FOWLER: Same objection.
10 BY MR. HOAG:
11 Q You can answer.
12 A If -- well, here's my problem. If, in
13 fact, aged sidestream smoke increases and NNK
14 increases in aged sidestream smoke, in what, in the
15 chamber?
16 Q In smoke that is inhaled by involuntary
17 smokers.
18 A I would have to say that, no, that that
19 would not prove that smoking or ETS in any way is
20 associated directly with disease.
21 Q Well, the reason that Philip Morris looks
22 at the nitrosamine level is because they know that
23 nitrosamines, tobacco specific nitrosamines are
24 carcinogenic compounds; is that correct?
25 MR. FOWLER: Object to the form of the

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1 question.
2 BY MR. HOAG:
3 Q Is that correct?
4 A Certain nitrosamines have been shown to be
5 animal carcinogens under certain circumstances and
6 certain conditions.
7 Q Right. Tobacco has been known to contain
8 carcinogenic compounds; is that correct?
9 MR. FOWLER: Object to the form of the
10 question.
11 THE DEPONENT: Not all of them.
12 BY MR. HOAG:
13 Q Well, NNK nitrosamines; is that correct?
14 A That has been known to be an animal
15 carcinogen under certain circumstances and
16 conditions.
17 Q Now, on a package of cigarettes today the
18 surgeon general's warning will say that -- at least
19 on some of the packages, I know the warning may vary,
20 but some of the cigarette packs will say, smoking
21 causes lung cancer, heart disease and emphysema. Do
22 you agree with the surgeon general's warning that
23 smoking causes lung cancer, heart disease and
24 emphysema?
25 MR. FOWLER: Object to the form.

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1 THE DEPONENT: Technically speaking in
2 terms of having data to prove the cause, no, I don't
3 agree.
4 BY MR. HOAG:
5 Q In a non-technical sense do you agree that
6 smoking causes heart disease?
7 MR. FOWLER: Sorry, John, you broke up at
8 the beginning of the question.
9 BY MR. HOAG:
10 Q In a non-technical sense do you agree that
11 smoking causes lung cancer, heart disease and
12 emphysema?
13 MR. FOWLER: Object to the form.
14 THE DEPONENT: I don't know if I understand
15 what non-technical sense means.
16 BY MR. HOAG:
17 Q Well, you put that caveat in the front, in
18 a technical sense. I don't know --

19 A That's right. The data that would be
20 required in order to prove cause and effect doesn't
21 exist in those situations.

22 Q So then your testimony is that as a
23 scientist you do not agree that lung cancer, heart
24 disease -- that smoking causes lung cancer, heart
25 disease and emphysema; is that correct?

1 MR. FOWLER: Object to the form of the
2 question. It misstates her former testimony.

3 THE DEPONENT: I would have to have it
4 repeated.

5 BY MR. HOAG:

6 Q I'll repeat it. As a scientist, you do not
7 agree that lung cancer, heart disease and
8 emphysema -- that smoking causes lung cancer, heart
9 disease and emphysema; is that correct?

10 MR. FOWLER: Same objection.

11 THE DEPONENT: As I said, the technical
12 data required to prove cause and effect does not
13 exist. There are risk factors and there are
14 statistical associations.

15 BY MR. HOAG:

16 Q Do you smoke?

17 A Occasionally.

18 Q How frequently do you smoke?

19 A Oh, I would say whenever I want to
20 subjectively evaluate a product. I will smoke in
21 those situations.

22 Q You say that you smoke in order to test
23 actual products of Philip Morris?

24 A In an informal basis, yes.

25 Q Do you smoke for any other reason?

1 A No.

2 Q Have you ever smoked for any reason other
3 than to test Philip Morris products?

4 A Informally, occasionally I'll pick up a
5 cigarette, yeah.

6 Q How frequently will you smoke other than to
7 test Philip Morris cigarettes?

8 A Not very frequently.

9 Q How many cigarettes a week?

10 A I wouldn't measure it by weeks. I would
11 say maybe I'll smoke a pack of cigarettes a year.

12 Q Have you ever smoked more frequently than
13 that?

14 A No.

15 Q When did you first start to smoke?

16 MR. FOWLER: I'm going to object to that
17 characterization.

18 THE DEPONENT: I would say within the last
19 five or six years.

20 BY MR. HOAG:

21 Q Other than five or six years ago, prior to
22 that, you didn't smoke cigarettes at all; is that
23 correct?

24 A To my recollection, that's correct.

25 Q Did you ever try cigarettes as a teenager

1 or try a cigarette as a teenager?

2 A Not to my recollection.

3 Q And why did you never try cigarettes as a

4 teenager?
5 A I just never did.
6 Q Now, the one pack or so a year that you
7 smoke, are most of those cigarettes that you smoke,
8 are they for purposes of testing Philip Morris
9 products?
10 A Again, I don't formally test Philip Morris
11 products. I would occasionally, in a meeting or
12 other situation, smoke a cigarette.
13 Q Now, the fact that you didn't smoke until
14 five or six years ago, did that have anything to do
15 with the health affects of cigarette smoking?
16 A No.
17 MR. FOWLER: Object to the form.
18 BY MR. HOAG:
19 Q Do you have any concern about the possible
20 health affects of cigarette smoking?
21 MR. FOWLER: Object to the form.
22 THE DEPONENT: Obviously there are warning
23 labels on packs that cigarette smoking is a risk
24 factor. That is clearly information that's provided.
25

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1 BY MR. HOAG:
2 Q If your children asked you if they should
3 smoke, would you give them any advice?
4 A Yes.
5 Q What advice would you give them?
6 A Wait until you're of legal age and make
7 your decision based on the information available to
8 you and what you can find out in an educated way at
9 that time.
10 Q Other than telling them to wait until
11 they're of legal age to decide whether they're going
12 to smoke, would you impart any information to them
13 about your knowledge of cigarettes if they asked you
14 today --
15 MR. FOWLER: Object to the form.
16 BY MR. HOAG:
17 Q -- whether they should smoke?
18 MR. FOWLER: Object to the form.
19 THE DEPONENT: Would I --
20 BY MR. HOAG:
21 Q Yes.
22 A -- if they asked?
23 Q Well, if one of your children said, some
24 kids at school are smoking cigarettes, are they safe,
25 what would you say?

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1 MR. FOWLER: Object to the form.
2 THE DEPONENT: I would say that there is,
3 they have been designated as a risk factor; there is
4 a statistical association.
5 BY MR. HOAG:
6 Q So you would tell your children there is a
7 statistical association; is that right?
8 A Between smoking and certain diseases.
9 Q And that's pretty much as far as you would
10 go in your advice to your kids; is that right?
11 A Other than what I've already said; that's
12 correct.
13 Q Would you tell your children that it hasn't
14 really been proven that cigarettes cause any disease?

15 MR. FOWLER: Object to the form.
16 THE DEPONENT: I think that, you know, this
17 is hypothetical because it would depend on the
18 question and the situation.

19 BY MR. HOAG:

20 Q Well, hypothetically, if one of your
21 children said to you, Mom, has it been proven that
22 cigarettes cause lung cancer, what would you say?

23 A What I just said, that technically
24 speaking, scientifically speaking the studies that
25 would be required in order to prove that are not

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1 there.

2 Q You would say the same thing for heart
3 disease and emphysema, right?

4 A I would say that there are statistical
5 associations between smoking and those diseases.

6 Q Have you ever known anyone who smoked
7 cigarettes who did get a disease?

8 MR. FOWLER: Objection to the form of the
9 question. That's vague.

10 BY MR. HOAG:

11 Q Let me be more specific. Have you ever
12 known anyone that smoked cigarettes who has
13 contracted lung cancer?

14 A I'm trying to think. Gee, maybe remotely,
15 but certainly not, I don't believe, directly, in my
16 recollection, right now. I can't recall.

17 Q Do you ever fly on airplanes?

18 A Yes.

19 Q Did you ever fly on airplanes when smoking
20 was allowed?

21 A Yes.

22 Q I guess sometimes you fly international
23 flights now, don't you?

24 A Yes.

25 Q So you sometimes have occasion to fly on

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1 international flights where smoking is still allowed,
2 correct?

3 A Yes.

4 Q And when you fly on a flight where smoking
5 is allowed, do you sit in the smoking section?

6 A Sometimes, yes.

7 Q Does it matter to you which section you sit
8 in?

9 A No.

10 Q You don't specifically ask to sit in a
11 non-smoking section; is that correct?

12 A I didn't hear all of that question.

13 Q You don't specifically request to sit in
14 the non-smoking section of the aircraft; is that
15 correct?

16 A I don't specifically get my ticket, so I
17 can't really -- I don't really know how that's
18 handled.

19 Q No one says to you, do you want the
20 non-smoking or smoking section?

21 A No one says that.

22 Q Do you normally sit in the smoking section
23 when you fly in an aircraft for an international
24 flight?

25 A Sometimes I do and sometimes I don't.

1 Q It just doesn't matter to you?
2 A That's correct.
3 Q So other peoples' cigarette smoke doesn't
4 bother you, whether you smoke or not; is that
5 correct?
6 A That's correct.
7 Q Have you ever smoked a cigarette on an
8 airplane?
9 A Not that I can recall, no.
10 Q Have you ever heard anyone on an airplane
11 complain about the cigarette smoke?
12 A No.
13 Q Have you ever seen more than ten people
14 smoking on an airplane at the same time?
15 A No.
16 Q What's the most number of people you have
17 ever seen smoking on an airplane at the same time?
18 A Whoa, I would say -- at the same time or
19 the most number of smoking seats?
20 Q That are smoking. I don't mean
21 simultaneously they're puffing in unison. They all
22 have cigarettes at the same time.
23 A I would say two or three, generally
24 speaking, are smoking at the same time.
25 Q Have you ever seen as many, observed as

1 many as ten people on an airplane flight who had a
2 cigarette lit at the same time?
3 A Personally, no.
4 Q When the cigarette, when the no-smoking
5 light on -- international flights still have a
6 smoking light, a no-smoking light, correct?
7 A No, many international flights don't have
8 smoking anymore.
9 Q Some of them do, though, correct?
10 A Yes, some of them do.
11 Q Have you flown on any of those within the
12 last year where cigarette smoking was allowed?
13 A No, I haven't.
14 Q When was the last time you were a passenger
15 on an aircraft where cigarette smoking was allowed?
16 A Probably a couple of years ago.
17 Q When cigarette smoking was allowed on
18 aircraft that you flew in, did you notice whether or
19 not people tended to smoke more heavily immediately
20 upon the cigarette smoking light, no-smoking light
21 going off?
22 MR. FOWLER: I'm sorry, John, I don't
23 understand that question.
24 BY MR. HOAG:
25 Q I'll rephrase it. Were there any times

1 during the flight when you noticed that cigarette
2 smoking was more frequent?
3 A I can't say that I personally paid
4 attention to that, nor would I be necessarily in a
5 position in an airline to observe every smoker at the
6 same time.
7 Q When you flew in aircraft that smoking was
8 allowed in, did you sit in the smoking section less
9 frequently than you sat in the no-smoking section or
10 do you know?

11 A Oh, I'd say a number of years ago when
12 smoking was allowed on all international flights, I
13 would be sitting most of the time in the smoking
14 section.
15 Q Have you ever known anyone who has tried to
16 quit smoking?
17 A I don't understand your question. Tried?
18 Q Uh-huh.
19 A I know people who did quit. I'm not sure I
20 could tell when someone was trying.
21 Q So you've known people that have quit
22 smoking?
23 A Yes.
24 Q They quit smoking for health reasons?
25 A I don't know.

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1 Q Did anyone share with you that they were
2 trying to quit or actually quit smoking for health
3 reasons?
4 A Not personally, no.
5 Q Have you ever known anyone who tried to
6 quit smoking but was unable to quit smoking?
7 A Not personally, no.
8 MR. FOWLER: Object to the form.
9 BY MR. HOAG:
10 Q You will admit that there are some people
11 who sincerely try to quit smoking but simply are not
12 able to do so, wouldn't you admit that?
13 MR. FOWLER: Object to the form of the
14 question.
15 THE DEPONENT: As I said before, I don't
16 have personal knowledge of that.
17 BY MR. HOAG:
18 Q Is it your belief that any smoker,
19 regardless of how many years they have smoked and how
20 heavy a smoker they are, can quit cold turkey if they
21 can make up their mind to do so?
22 A I lost part of that question, I'm sorry.
23 Q I'll --
24 MR. FOWLER: It broke up a little bit,
25 John, sorry.

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1 BY MR. HOAG:
2 Q I'll repeat it. Is it your belief that any
3 smoker, irrespective of how many years they have
4 smoked and how heavy a smoker they are, can quit
5 smoking, cold turkey, if they just want, if they just
6 make up their mind to do it?
7 A Certainly many people have.
8 Q Is it your position that anybody that wants
9 to quit can quit smoking?
10 A Yes.
11 Q You will agree that as a practical matter
12 the tobacco industry, including Philip Morris, if it
13 wants to remain in the business of selling tobacco
14 and cigarettes, must replace quitting and dying
15 smokers with young smokers, correct?
16 MR. FOWLER: Object to the form of the
17 question.
18 THE DEPONENT: I disagree with the
19 characterization.
20 BY MR. HOAG:
21 Q You disagree that they must replace

22 quitting and dying smokers with young smokers?
23 A I disagree with the characterization, and
24 therefore I cannot address it. It does not represent
25 a situation that I'm familiar with.

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1 Q You are aware that 400,000 Americans a year
2 die as a result of diseases contracted from smoking
3 cigarettes, correct?

4 MR. FOWLER: Object to the form of the
5 question.

6 BY MR. HOAG:

7 Q You are aware of that, correct?

8 A I'm sorry, you broke up. Could you repeat
9 that again?

10 Q You are aware that approximately 400,000
11 Americans die every year from diseases contracted as
12 a result of smoking cigarettes, correct?

13 MR. FOWLER: Same objection.

14 THE DEPONENT: I'm aware that that's a
15 number that has been utilized frequently. But I'm
16 also aware that the basic way that that number is
17 arrived at is a calculation, and that there are many
18 other factors involved, and that if one were to take
19 all of the factors involved, we would have more
20 people dying in the United States than die every
21 year.

22 BY MR. HOAG:

23 Q Okay. So you do not believe that 400,000
24 people die as a result of cigarette smoking every
25 year; is that correct?

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1 A I don't believe that that is a technically
2 data supported number.

3 Q Do you believe any people in the United
4 States die from smoking cigarettes?

5 A As I indicated, smoking can be a risk
6 factor, therefore it's possible, but it cannot be
7 determined based on the data that we have.

8 Q So you don't know whether even a single
9 person dies from smoking cigarettes; is that correct?

10 MR. FOWLER: Object to the form.

11 THE DEPONENT: As I said, the technical
12 data to support that statement is not available.

13 BY MR. HOAG:

14 Q You will agree that a lot of tobacco
15 advertisement is directed towards the youth market,
16 correct?

17 MR. FOWLER: Object to the form of the
18 question.

19 THE DEPONENT: I disagree with the
20 characterization, and so I do not agree with your
21 statement.

22 BY MR. HOAG:

23 Q One of the cigarettes that's marketed by
24 Philip Morris is Marlboro, correct?

25 A Yes.

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1 Q You really can't miss those billboards with
2 the cowboys riding around on the billboards. You can
3 see those, right?

4 MR. FOWLER: Object to the form.

5 THE DEPONENT: You broke up a little bit.

6 BY MR. HOAG:

7 Q Okay. I'll repeat the question, okay?
8 A Okay.
9 Q The billboards for Marlboro, you've seen
10 those, correct?
11 A Yes.
12 Q Those billboards obviously appeal to young
13 people, correct?
14 MR. FOWLER: Object to the form.
15 THE DEPONENT: Not to my knowledge.
16 BY MR. HOAG:
17 Q What's depicted in the Marlboro billboards?
18 A There are many different kinds of
19 billboards.
20 Q You have heard of the Marlboro Man,
21 correct?
22 A Yes.
23 Q He's depicted as a cowboy, correct?
24 A Yes.
25 Q So the image of a cowboy appeals to

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1 youngsters?
2 MR. FOWLER: Object to the form, also it's
3 outside this witness' area of expertise. She's not
4 an advertising expert.
5 THE DEPONENT: I repeat, not to my
6 knowledge.
7 BY MR. HOAG:
8 Q What does a frank statement to cigarette
9 smokers mean to you?
10 A It was a statement put out by the tobacco
11 industry a number of years ago.
12 Q And what did the statement say?
13 A It's been a while since I've reviewed it,
14 and I certainly have not memorized it.
15 Q Well, do you recall that among other things
16 it promised that the cigarette industry would mount a
17 research effort to explore whether cigarette smoking
18 caused lung cancer or any other disease?
19 MR. HOAG: I'm going to object to this line
20 of questioning. We don't have that document here in
21 front of us, and you know, answering questions
22 without the document here is obviously problematic at
23 best, and so I will object to this line of
24 questioning, without the document being in front of
25 the witness.

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1 BY MR. HOAG:
2 Q Okay. I'm asking you do you recall whether
3 or not, among other things, the frank statement
4 promised that the cigarette industry would mount a
5 research effort to explore whether cigarette smoking
6 caused lung cancer or any other disease?
7 MR. FOWLER: Same objection.
8 THE DEPONENT: I don't recall if it stated
9 that specifically as you basically just recited it,
10 but I do recall that it did indicate that the
11 industry would do further work.
12 BY MR. HOAG:
13 Q Now, has the industry position changed at
14 all since that frank statement was written concerning
15 whether or not cigarette smoking causes any disease?
16 MR. FOWLER: Object to the form.
17 THE DEPONENT: I am not a representative of

18 the industry, per se, but I can say that based on my
19 experience and knowledge, I have no knowledge that it
20 has changed, based on where I sit.

21 BY MR. HOAG:

22 Q Have you read cigarette company responses
23 to research conducted to show cancer, cigarette
24 smoking causes lung cancer, back in the 1950s? Do
25 you recall ever reading cigarette company responses

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1 to that?

2 MR. FOWLER: I'm going to object to the
3 form. I'm not sure what this reference is to.

4 THE DEPONENT: I may have. I don't know
5 what you're talking about.

6 BY MR. HOAG:

7 Q Well, do you know that the cigarette
8 company responses back in the 1950s are the same as
9 the cigarette company responses are now, as to
10 whether or not cigarette smoking causes lung cancer
11 or any other disease? Are you aware of that?

12 MR. FOWLER: I'm going to object again --

13 THE DEPONENT: Yeah.

14 MR. FOWLER: -- because the witness has
15 said she doesn't recall exactly what the frank
16 statement says, and it's hard to compare when you
17 don't have a comparison.

18 MR. HOAG: Well, now, I'm not asking her
19 about the frank statement specifically, I'm asking
20 her whether she's aware of some things.

21 THE DEPONENT: If you could just repeat the
22 question, sorry.

23 BY MR. HOAG:

24 Q Okay. I'll try to rephrase the question.
25 Are you aware of whether or not the cigarette

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1 industry has ever changed its position since the
2 1950s on whether cigarette smoking causes lung cancer
3 or any other diseases?

4 MR. FOWLER: Again, I'm objecting to the
5 form of the question. There's no foundation laid.
6 The witness has already testified what Philip Morris
7 stated concerning smoking and health.

8 MR. HOAG: Greg, I understand you're
9 objecting. I would just like her to answer it.

10 BY MR. HOAG:

11 Q Now, go ahead.

12 A I believe that there has been a lot of data
13 obtained between the 1950s and today. And to the
14 degree that that data is utilized and evaluated, I
15 certainly think that in that period of time the
16 industry and certainly Philip Morris recognizes that
17 smoking is a risk factor, for example.

18 Q Well, you're aware that in the 1950s the
19 cigarette industry and Philip Morris said there was
20 insufficient evidence to prove cigarette smoking
21 caused lung cancer, correct?

22 MR. FOWLER: Object to the form.

23 THE DEPONENT: I don't have that document,
24 I can't attest to that specifically.

25

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1 BY MR. HOAG:

2 Q Well, you're aware that now as we speak

3 Philip Morris and the cigarette industry -- with the
4 exception perhaps of Liggett -- still says that
5 there's insufficient evidence to prove that cigarette
6 smoking causes lung cancer or any other disease,
7 correct?

8 MR. FOWLER: Object to the form.

9 THE DEPONENT: As I already indicated, the
10 scientific evidence is not there that that is a
11 proven fact that cigarette smoking causes lung cancer
12 or any other disease.

13 BY MR. HOAG:

14 Q And as a scientist who works for Philip
15 Morris, that's your position, correct?

16 MR. FOWLER: Object to the form.

17 THE DEPONENT: Yeah. I'm not sure I
18 understand your question. I think there's an
19 implication there that I don't understand.

20 BY MR. HOAG:

21 Q What implication did you think was there
22 that you didn't understand?

23 A I'm not sure. Could you repeat that?

24 Q As a scientist for Philip Morris, it's your
25 position that there is not sufficient evidence to

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1 prove that cigarette smoking causes lung cancer or
2 any other disease, correct?

3 MR. FOWLER: Same objection.

4 THE DEPONENT: As a scientist, that
5 information does not exist; that it is proven.

6 BY MR. HOAG:

7 Q Let me first ask, do you ever go out to eat
8 at restaurants?

9 A Yes.

10 Q And when you go out to eat at restaurants,
11 do you sit in the non-smoking section or the smoking
12 section?

13 A I say it doesn't matter.

14 Q Okay. You don't care one way or the other?

15 A That's correct.

16 Q And when you go out to a restaurant to eat,
17 do you take your family or does your family go?

18 A Yes.

19 Q So does any member of your family care
20 whether they sit in the smoking or non-smoking
21 section in any restaurant?

22 A I haven't asked them specifically.

23 Q But when you go as a family, there's no
24 preference expressed? You just sit wherever; is that
25 correct?

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1 A If we're asked, we say it doesn't make any
2 difference.

3 Q Do you have any concern at all about the
4 health affects of environmental tobacco smoke?

5 MR. FOWLER: Object to the form.

6 THE DEPONENT: To the degree that I have
7 already stated that there have been some studies that
8 indicate that there is a very weak, if any, risk
9 factor association; that would be the evidence that's
10 available to your point.

11 BY MR. HOAG:

12 Q Are you familiar with the EPA report
13 published in 1993?

14 A I'm generally familiar with it, yes.
15 Q Have you read it?
16 A I don't think I have read the whole thing,
17 no, but I'm certainly familiar with aspects of the
18 report.
19 Q Have you read the underlying studies that
20 are referred to in the report?
21 A I have not done a technical analysis of
22 those studies.
23 Q Now, this particular case that you're being
24 deposed about today is the Broin case. Do you know
25 anything about the Broin case?

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1 A In general, yes.
2 Q What's your understanding of the case?
3 A Well, I have reviewed very briefly aspects
4 of the complaint, and I understand it relates to
5 airlines and exposure to environmental tobacco smoke.
6 Q When were you first contacted about being a
7 witness in the Broin case?
8 A I would say that's been fairly recently,
9 within the last month or two.
10 Q Okay. Have you read any depositions from
11 the Broin case?
12 A Yes.
13 Q Which ones?
14 A A doctor, a statistician.
15 Q Dr. Bookstein?
16 A No.
17 Q It was a statistician?
18 A Yeah, Edwin something.
19 Q Any other depositions you've read?
20 MR. FOWLER: In the Broin case?
21 MR. HOAG: Yes.
22 THE DEPONENT: I might have, but I really,
23 I've read several depositions, but I'm not sure if
24 they were specifically for Broin, and that's my
25 problem right now. To the degree that Dr. Morgan's

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1 depositions were Broin, then they would be included.
2 BY MR. HOAG:
3 Q Have you read more than one deposition of
4 Dr. Morgan?
5 A Yes, I've read his last one completely and
6 his first one, I just received the parts that were
7 relevant to me specifically.
8 Q By the last one completely, you mean the
9 one that was done where I asked questions and also
10 Greg asked questions?
11 A Yes.
12 Q How long ago did you read that?
13 A I believe I received it maybe a week after
14 the deposition.
15 Q Now, aside from the compensation you
16 already receive as an employee of Philip Morris, are
17 you receiving any additional compensation for serving
18 as an expert witness?
19 A No.
20 MR. HOAG: Let me take about a five-minute
21 break, and I will wrap this up in the next few
22 minutes.
23 (Recess taken)
24 MR. FOWLER: For the record, I will state

25 that I made a copy of the document that we received

1 from Dr. Ellis' car, and it's been marked as
2 Deposition Exhibit Number 1.

3 MR. HOAG: Okay. Thanks. Are we ready?

4 MR. FOWLER: Yes.

5 BY MR. HOAG:

6 Q Okay. Just a couple more questions. Other
7 than the deposition of, depositions of Dr. Morgan and
8 a statistician whose name you don't recall right now,
9 are there any other depositions that you've reviewed
10 that you can recollect?

11 A I've reviewed a number of depositions, but
12 specifically for the Broin case those are the only
13 ones that I know are specifically related, that I can
14 recall.

15 Q Okay. Did you review any documents
16 specifically for the Broin case?

17 A I've been doing a lot of reading in a
18 number of different areas. As I said earlier, my
19 total knowledge, experience, et cetera and the list
20 of documents and references that you were provided,
21 I've been reviewing on and off, as well as the
22 current literature.

23 Q Are you familiar with a study that Philip
24 Morris was involved in related to smoking patterns of
25 hyperkinetic children?

1 MR. FOWLER: Object to the form of the
2 question.

3 THE DEPONENT: Not personally, no.

4 BY MR. HOAG:

5 Q When you say, not personally, what do you
6 mean?

7 A I was not personally involved in that
8 study, and I don't have personal knowledge of it.

9 Q Do you know anything about it?

10 MR. FOWLER: Object to the form.

11 BY MR. HOAG:

12 Q You can answer.

13 A As I stated, no.

14 Q Do you know whether Philip Morris ever did
15 a study or attempted to do a study on the smoking
16 habits of hyperkinetic children?

17 MR. FOWLER: Object to the form. It's
18 compound.

19 BY MR. HOAG:

20 Q You can answer.

21 A The smoking habits of hyperkinetic
22 children?

23 Q Right.

24 A Not specifically, no.

25 Q Are you aware of any study that Philip

1 Morris ever attempted to do concerning hyperkinetic
2 children?

3 A I believe there was an allegation and there
4 was some documentation of a proposal for a study a
5 number of years ago that related to hyperkinetic
6 children, but it is my knowledge that there's no
7 evidence that that study was performed.

8 Q What documentary evidence did you see
9 concerning the attempt to do a study on hyperkinetic

10 children?
11 A I believe most of my knowledge comes from
12 the media.
13 Q Have you seen any Philip Morris internal
14 documents related to that issue?
15 A I may have reviewed those a while back,
16 maybe a year, or when that was in the media. I may
17 have asked for a literature review of that to see
18 what documents were available.
19 Q Did you ever ascertain why Philip Morris
20 was attempting to do a study of hyperkinetic
21 children?
22 A I never asked the question, and I never
23 ascertained the answer.
24 Q Why did you come to review the literature
25 regarding that issue?

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1 MR. FOWLER: Object to the form.
2 THE DEPONENT: Again, because of the media
3 reports.
4 BY MR. HOAG:
5 Q Do you have any opinion as to why Philip
6 Morris would attempt to conduct a study of
7 hyperkinetic children?
8 MR. FOWLER: I'm going to object to calling
9 for an opinion. This witness is not designated as an
10 expert in that particular study or area.
11 BY MR. HOAG:
12 Q I'm asking the question, do you?
13 A No.
14 Q Have you seen or read any news accounts
15 concerning the Broin case?
16 A I believe it's been mentioned in certain
17 articles.
18 Q Have you read the articles?
19 A Some of them.
20 Q What specific articles do you recollect
21 having read concerning the Broin case?
22 A I don't recollect any specific articles
23 specifically about the Broin case, and I can't point
24 to any specific article where I have read about the
25 Broin case, but I do recall reading about, in

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1 general, the litigation that is ongoing and obviously
2 Broin being one of the issues that was mentioned in
3 some of the media articles.
4 Q Have you read Dr. Carchman's deposition?
5 A No.
6 Q C-A-R-C-H-M-A-N. Do you know Dr. Carchman?
7 A Yes.
8 Q Who is he?
9 A He is the group director of scientific
10 affairs at Philip Morris R and D.
11 Q Have you discussed this case with
12 Dr. Carchman?
13 A I had some conversations with him about
14 some of the information associated that would be
15 relevant to the case, yes.
16 Q Did he discuss his deposition with you?
17 A We talked in general about some of the
18 topics that came up in the deposition.
19 Q What topics did he discuss with you that
20 came up in the deposition?

21 MR. FOWLER: Object to the form.
22 THE DEPONENT: We reviewed some of the
23 topics that came up in his, in the deposition,
24 basically.
25

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1 BY MR. HOAG:
2 Q Did he tell you that I asked him why the
3 person who ordered that Dr. Morgan shred documents
4 would be the person who was supervising or requesting
5 a study, related to Dr. Morgan's deposition?
6 MR. FOWLER: I'm going to object to the
7 form.
8 BY MR. HOAG:
9 Q Did he tell you that?
10 A He did mention there was some question
11 related to that issue, but not in the same words,
12 necessarily, that you used.
13 Q And did you rehearse that question prior to
14 me taking this deposition today?
15 MR. FOWLER: Object to the form of the
16 question, if you're talking about her conversations
17 with lawyers, and I'm going to object to that
18 question as privileged.
19 BY MR. HOAG:
20 Q You can answer it.
21 MR. FOWLER: No, not to the extent that it
22 involves attorney/client communication.
23 BY MR. HOAG:
24 Q I'm asking you if you rehearsed the answer
25 to that question.

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1 A I've had no rehearsal with anyone, lawyer
2 or non-lawyer, about the answer to that question.
3 Q Were you asked that question during
4 practice depositions?
5 A No.
6 Q So you were just told by Dr. Carchman prior
7 to this deposition that that was a question that I
8 asked him, correct?
9 A That's correct.
10 Q So you knew that would also be a question I
11 would ask you?
12 A No.
13 Q You assumed it would be a question I would
14 ask you, correct?
15 A No.
16 Q Well, let me ask you, if you admitted or if
17 you said on the record that you instructed that
18 Dr. Morgan's documentation of the NNK nitrosamine
19 level be destroyed, you wouldn't be sitting here
20 today, would you?
21 MR. FOWLER: I'm going to object to the
22 form of the question. The witness can't answer a
23 question phrased like that.
24 THE DEPONENT: I don't understand the
25 question, quite frankly.

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1 BY MR. HOAG:
2 Q Well, you make a lot of money as a Philip
3 Morris scientist, don't you?
4 MR. FOWLER: Object to the form of the
5 question, argumentative.

6 BY MR. HOAG:
7 Q Do you make a lot of money as a Philip
8 Morris scientist?
9 A It's relative.
10 MR. FOWLER: Objection.
11 BY MR. HOAG:
12 Q Pardon me?
13 A A lot, is relative.
14 Q Counting your bonus and your stock options
15 and your base salary, you make several hundred
16 thousand dollars a year as a Philip Morris scientist,
17 correct?
18 MR. FOWLER: Object to the form.
19 THE DEPONENT: Yes.
20 BY MR. HOAG:
21 Q And the profitability of Philip Morris
22 affects your level of compensation, doesn't it?
23 A Indirectly, for a certain portion of it.
24 Q And Dr. Morgan's testimony has a direct
25 impact on the future profitability of Philip Morris,

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1 doesn't it?
2 MR. FOWLER: I object to the form of the
3 question. You're calling for the witness to
4 speculate.
5 BY MR. HOAG:
6 Q You can answer.
7 A I can't see how testimony that is not
8 substantiated by evidence, and testimony that is
9 counter-contradicted by the current evidence, would
10 have -- and I hope it would not have -- in a
11 reasonable fashion, any impact.
12 MR. HOAG: I don't have any other
13 questions.
14 MR. FOWLER: And I don't have any
15 questions.
16 MR. HOAG: Okay. Obviously, I want a copy
17 of the deposition.
18 MR. FOWLER: Sorry, you just cut out.
19 MR. HOAG: We are just ordering a copy of
20 the deposition, of course, and I will talk to you
21 later, Greg, I'm sure. And Doctor, thank you very
22 much.
23 MR. FOWLER: Okay. And Doctor, do you want
24 to read and sign the deposition? She has indicated
25 yes, so we'll read and sign.

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1 (And further this deponent saith not)
2 (The deposition concluded at 12:58 p.m.)
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1 C E R T I F I C A T E
2 I, CATHY LYNN ELLIS, PHD, do hereby certify
3 that I have read the foregoing deposition given by me
4 on Wednesday, May 28, 1997, and I certify it to be a
5 true and correct transcript of my said deposition.
6 In the event that I desire to make changes in the
7 form or substance of my deposition, said changes will
8 be listed below along with my reasons for making
9 them.

10	PAGE	LINE	CHANGE AND REASON FOR MAKING CHANGE
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18 _____
19 Cathy Lynn Ellis, PhD

20 Sworn and subscribed
21 to before me this
22 ____ day of _____, 1997

23 _____
24 Notary Public
25 My Commission Expires:

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:
2 I, Sally Valentine Qualls, Notary Public
3 in and for the Commonwealth of Virginia at Large,
4 and whose commission expires December 31, 1999, do
5 certify that the aforementioned appeared before me,
6 was sworn by me, and was thereupon examined by
7 counsel; and that to the best of my abilities the
8 foregoing is a true, correct, and full transcript
9 of the testimony adduced.

10 I further certify that I am neither related
11 to nor associated with any counsel or party to this
12 proceeding, nor otherwise interested in the event
13 thereof.

14 Given under my hand at Richmond, Virginia,
15 this 29th day of May, 1997.

16

17

18 Sally Valentine Qualls - Notary Public
19 Commonwealth of Virginia at Large
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